Annual Report of The Ombudsman, Hong Kong

18th Issue • June 2006

2006



OFFICE OF THE OMBUDSMAN, HONG KONG

Vision

To ensure that Hong Kong is served by a fair and efficient public administration which is committed to accountability, openness and quality of service

Mission

Through independent, objective and impartial investigation, to redress grievances and address issues arising from maladministration in the public sector and bring about improvement in the quality and standard of and promote fairness in public administration

Functions

The Ombudsman should serve as the community's watchdog to ensure that:

- Bureaucratic constraints do not interfere with administrative fairness
- Public authorities are readily accessible to the public
- Abuse of power is prevented
- Wrongs are righted
- Facts are pointed out when public officers are unjustly accused
- Human rights are protected
- The public sector continues to improve quality and efficiency

Values

- Maintaining impartiality and objectivity in our investigations
- Making ourselves accessible and accountable to the public and organisations under our jurisdiction
- According the public and organisations courtesy and respect
- Upholding professionalism in the performance of our functions

Performance Measures

- Speed of case work
- Complainants' level of satisfaction with case handling
- Redress obtained
- Recommended improvement measures committed to and/or implemented
- Non-repetition of complaints

香港申訴專員用箋 THE OMBUDSMAN, HONG KONG

OUR REF:

DATE: **26 June 2006**

The Honourable Donald TSANG, GBM
The Chief Executive
Hong Kong Special Administrative Region
People's Republic of China

Dear Sir,

Pursuant to Section 3(4) of Schedule 1A to The Ombudsman Ordinance, I have the honour of submitting my report on the exercise of the function of The Ombudsman in the year April 2005 to March 2006. This includes a statement of accounts and the auditor's report on the statement.

Yours faithfully,

(Alice TAI)
The Ombudsman

Encl.

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THE OMBUDSMAN

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31st MARCH 2006

AUDITORS' REPORT TO THE OMBUDSMAN

(established in Hong Kong pursuant to The Ombudsman Ordinance)

We have audited the financial statements on pages (2) to (14) which have been prepared in accordance with accounting principles generally accepted in Hong Kong.

Respective responsibilities of The Ombudsman and the auditors

The Ombudsman Ordinance requires The Ombudsman to prepare financial statements which give a true and fair view. In preparing financial statements which give a true and fair view it is fundamental that appropriate accounting policies are selected and applied consistently.

It is our responsibility to form an independent opinion, based on our audit, on those financial statements and to report our opinion solely to you, as a body, in accordance with our agreed terms of engagement, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

Basis of opinion

We conducted our audit in accordance with Hong Kong Standards on Auditing issued by the Hong Kong Institute of Certified Public Accountants. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by The Ombudsman in the preparation of the financial statements, and of whether the accounting policies are appropriate to the circumstances of The Ombudsman, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance as to whether the financial statements are free from material misstatement. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements. We believe that our audit provides a reasonable basis for our opinion.

Opinion

In our opinion, the financial statements give a true and fair view of the state of affairs of The Ombudsman as at 31st March 2006 and of its surplus and cash flows for the year then ended.

PricewaterhouseCoopers
Certified Public Accountants

Hong Kong, 29th May, 2006

THE OMBUDSMAN
(All amounts in Hong Kong dollars unless otherwise stated)

BALANCE SHEET

	Note	As at 31 March 2006	As at 31 March (Restated) 2005
ASSETS			
Non-current assets			
Property, plant and equipment	5	22,532,965	23,782,776
Prepaid operating lease	4	69,201,956	70,596,176
		91,734,921	94,378,952
Current assets			
Deposits and prepayments		718,450	1,232,433
Interest receivable		1,419,111	143,574
Cash at banks and in hand	6	167,189,175	129,259,012
		169,326,736	130,635,019
Total assets		261,061,657	225,013,971
FUNDS			
Accumulated funds		160,572,157	124,112,265
LIABILITIES			
Non-current liabilities			
Contract gratuity payable		3,078,676	3,963,887
Government subventions – non-current	7	88,526,548	91,452,748
		91,605,224	95,416,635
Current liabilities			
Other payables and accruals		1,183,782	1,066,451
Contract gratuity payable		4,774,294	1,492,420
Government subventions – current	7	2,926,200	2,926,200
		8,884,276	5,485,071
Total liabilities		100,489,500	100,901,706
Total funds and liabilities		261,061,657	225,013,971

The Ombudsman

The notes on pages (6) to (14) form an integral part of these financial statements.

STATEMENT OF INCOME AND EXPENDITURE

	Note	Year ended 31 March 2006	Year ended 31 March (Restated) 2005
Income			
Government subventions		81,315,309	86,913,065
Amortisation of Government subventions	7	2,926,200	2,945,022
Interest income on bank deposits		5,746,979	741,441
Other income		8,016	21,330
		89,996,504	90,620,858
Expenditure			
Operating expenses	8	(53,536,612)	(53,074,200)
Surplus for the year		36,459,892	37,546,658

The notes on pages (6) to (14) form an integral part of these financial statements.

STATEMENT OF CHANGES IN FUNDS

	Year ended 31 March	
	2006	2005
Total funds as at 1st April	124,112,265	86,565,607
Surplus for the year	36,459,892	37,546,658
Total funds as at 31st March	160,572,157	124,112,265

The notes on pages (6) to (14) form an integral part of these financial statements.

CASH FLOW STATEMENT

	Note	Year ended 31 March 2006	2005
Cash flows from operating activities			
Net cash generated from operating activities	12	33,766,557	34,896,557
Cash flows from investing activities			
Interest received		4,471,442	626,619
Purchase of property, plant and equipment		(307,836)	-
(Increase)/decrease in bank deposits with original maturity over 3 months		(141,168,516)	91,570,000
Net cash (used in)/generated from investing activities		(137,004,910)	92,196,619
(Decrease)/increase in cash and cash equivalents		(103,238,353)	127,093,176
Cash and cash equivalents at beginning of the year		129,259,012	2,165,836
Cash and cash equivalents at end of the year		26,020,659	129,259,012
Analysis of balances of cash and cash equivalents:			
Bank balances and cash		167,189,175	129,259,012
Less bank deposits with original maturity over 3 months		(141,168,516)	-
		26,020,659	129,259,012

The notes on pages (6) to (14) form an integral part of these financial statements.

NOTES TO THE FINANCIAL STATEMENTS

1 General information

The Ombudsman was established as a corporation sole by statute on 19th December 2001. The functions of The Ombudsman are prescribed by the Ombudsman Ordinance.

The Ombudsman is incorporated in Hong Kong. The address of its registered office is 30/F, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong.

These financial statements are presented in Hong Kong dollars unless otherwise stated. These financial statements have been approved for issue by The Ombudsman on 29th May 2006.

2 Summary of significant accounting policies

The principal accounting policies adopted in the preparation of these financial statements are set out below. These policies have been consistently applied to all the years presented, unless otherwise stated.

2.1 Basis of preparation

The financial statements have been prepared in accordance with Hong Kong Financial Reporting Standards ("HKFRS"), which is a collective term that includes all applicable individual HKFRS, Hong Kong Accounting Standards ("HKASs") and Interpretations issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA"). The financial statements have been prepared under the historical cost convention.

The preparation of financial statements in conformity with HKFRS requires the use of certain critical accounting estimates. It also requires management to exercise its judgement in the process of applying The Ombudsman's accounting policies. There is no area involving a higher degree of judgement or complexity, or areas where assumptions and estimates are significant to the financial statements.

<u>The adoption of new / revised HKFRS</u>
In 2006, The Ombudsman adopted the new / revised HKFRS, which are relevant to its operations. The 2005 comparatives have been amended as required, in accordance with the relevant requirements.

(i) The adoption of the following new / revised HKFRS did not result in substantial changes to The Ombudsman's accounting policies. In summary:

- HKAS 1 "Presentation of Financial Statements" has eliminated the provision allowing not to disclose comparative information for the reconciliation of movements in property, plant and equipment, and has affected the presentation of certain disclosures.
- HKAS 24 "Related Party Disclosures" has affected the identification of related parties and some other related-party disclosures.

2 Summary of significant accounting policies (Continued)

2.1 Basis of preparation (Continued)

(ii) In prior years, The Ombudsman, being a non-profit making organisation, was exempted from compliance with Statement of Standard Accounting Practice 17 "Property, plant and equipment" issued by HKICPA as property and equipment costing less than HK$1 million individually were written off in the year of purchase to the statement of income and expenditure. Upon the adoption of HKAS 16, The Ombudsman has applied the transitional provision as set out in paragraph 80B of HKAS 16 which permits The Ombudsman to deem the carrying amount of an item of property, plant and equipment immediately before apply HKAS 16 as the cost of that item. Depreciation on the deemed cost of an item of property, plant and equipment commences accordingly on 1st April 2005. Details of the accounting policy on property, plant and equipment are set out in note 2.3.

(iii) The adoption of revised HKAS 17 has resulted in a change in the accounting policy relating to the reclassification of leasehold land from property, plant and equipment to prepaid operating leases. The up-front prepayments made for the leasehold land are expensed in the statement of income and expenditure on a straight-line basis over the period of the lease or when there is impairment, the impairment is expensed in the statement of income and expenditure. In prior years, the leasehold land was accounted for at cost less accumulated depreciation and accumulated impairment.

The effect of the adoption of revised HKAS 17 is as follows:

	2006	**2005**
Decrease in property, plant and equipment	(67,499,945)	(69,372,445)
Increase in prepaid operating leases	69,201,956	70,596,176
Decrease in government subventions – current	478,280	478,280
Increase in government subventions – non-current	(2,180,291)	(1,702,011)
Decrease in administrative and operating expenses	(478,280)	(478,280)
Decrease in amortisation income of government subventions	478,280	478,280

2 Summary of significant accounting policies (Continued)

2.1 Basis of preparation (Continued)

(iv) The adoption of HKASs 32 "Financial Instruments: Disclosure and Presentation" and 39 "Financial Instruments: Recognition and Measurement" has resulted in a change in the accounting policy relating to the recognition, measurement, derecognition and disclosure of financial assets and liabilities. However, the effects of adopting HKASs 32 and 39 are insignificant as the financial assets and liabilities of The Ombudsman mainly arise from normal operations with short maturity dates, in which the fair value of the financial assets and liabilities approximates to its carrying value. The Ombudsman does not have any derivative financial instruments or hedging activities at the balance sheet date.

All standards adopted by The Ombudsman require retrospective application other than the transitional provisions as set out in (ii) and (iii) above.

Certain new standards, amendments and interpretations to existing standards (collectively, amendments) have been published which are effective for accounting periods beginning on or after 1st January 2006. Some of the amendments are relevant and applicable to The Ombudsman, however, they have not been early adopted in these financial statements. The Ombudsman has commenced, but not yet completed, an assessment of the impact of the applicable amendments on its results of operations and financial position. The Ombudsman is of the view that the impact on the financial statements would not be significant other than certain additional disclosures.

2.2 Functional and presentation currency

Items included in the financial statements are measured using the currency of the primary economic environment in which The Ombudsman operates ("the functional currency"). The financial statements are presented in Hong Kong dollars, which is The Ombudsman's functional and presentation currency.

2.3 Property, plant and equipment

Property, plant and equipment are stated at historical cost less depreciation and impairment losses. Historical cost includes expenditure that is directly attributable to the acquisition of the items.

Depreciation of property, plant and equipment is calculated using the straight-line method to allocate cost to their residual values over their estimated useful lives, as follows:

– Building	40 years
– Leasehold improvements	10 years
– Office equipment	5 years
– Office furniture	5 years
– Computer equipment	4 years
– Motor vehicles	5 years

The assets' residual values and useful lives are reviewed, and adjusted if appropriate, at each balance sheet date.

2 Summary of significant accounting policies (Continued)

2.4 Impairment of assets

Assets that are subject to amortisation and depreciation are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. An impairment loss is recognised for the amount by which the asset's carrying amount exceeds its recoverable amount. The recoverable amount is the higher of an asset's fair value less costs to sell and value in use. For the purposes of assessing impairment, assets are grouped at the lowest levels for which there are separately identifiable cash flows (cash-generating units).

2.5 Trade and other receivables

Trade and other receivables are recognised initially at fair value and subsequently measured at amortised cost using the effective interest method, less provision for impairment. A provision for impairment of trade and other receivables is established when there is objective evidence that The Ombudsman will not be able to collect all amounts due according to the original terms of receivables. The amount of the provision is the difference between the asset's carrying amount and the present value of estimated future cash flows, discounted at the effective interest rate. The amount of the provision is recognised in the statement of income and expenditure.

2.6 Cash and cash equivalents

Cash and cash equivalents include cash in hand, deposits held at call with banks, other short-term highly liquid investments with original maturities of three months or less.

2.7 Employee benefits

(a) Employee leave and gratuity entitlements

Employee entitlements to annual leave and gratuities are recognised when they accrue to employees. A provision is made for the estimated liability for annual leave and gratuities as a result of services rendered by employees up to the balance sheet date.

Employee entitlements to sick leave and maternity or paternity leave are not recognised until the time of leave.

(b) Pension obligations

The Ombudsman has established a mandatory provident fund scheme ("MPF Scheme") in Hong Kong. The assets of the MPF Scheme are held in separate trustee-administered funds. The Ombudsman has no further payment obligations once the contributions have been paid. The contributions are recognised as employee benefit expense when they are due. Prepaid contributions are recognised as an asset to the extent that a cash refund or a reduction in the future payments is available.

2 Summary of significant accounting policies (Continued)

2.8 Provisions

Provisions are recognised when The Ombudsman has a present legal or constructive obligation where as a result of past events; it is more likely than not that an outflow of resources will be required to settle the obligation; and the amount has been reliably estimated. Provisions are not recognised for future operating losses.

Where there are a number of similar obligations, the likelihood that an outflow will be required in settlement is determined by considering the class of obligations as a whole. A provision is recognised even if the likelihood of an outflow with respect to any one item included in the same class of obligations may be small.

2.9 Government grants

Grants from the government are recognised at their fair value where there is a reasonable assurance that the grant will be received and The Ombudsman will comply with all attached conditions.

Government grants relating to costs are deferred and recognised in the statement of income and expenditure over the period necessary to match them with the costs that they are intended to compensate.

Government grants relating to the purchases of property, plant and equipment are included in non-current liabilities as deferred government subventions and are recognised in the statement of income and expenditure on a straight line basis over the expected lives of related assets.

2.10 Income recognition

Income is recognised as follows:

(a) Government subventions
Government subventions and other income are accounted for on an accruals basis in accordance with note 2.9.

(b) Interest income
Interest income is recognised on a time-proportion basis using the effective interest method.

(c) Other income
Other income is recognised on an accruals basis.

2.11 Leases (as the lessee) - operating leases

Leases in which a significant portion of the risks and rewards of ownership of assets are retained by the lessor are classified as operating leases. Payments made under operating leases (net of incentives received from the lessor) are expensed in the statement of income and expenditure on a straight-line basis over the period of the lease.

The cost of acquiring leasehold land is accounted for as prepaid operating lease is amortised on a straight-line basis over the period of the lease.

3 Financial risk management

Risk management is carried out by the accounting division under policies approved by The Ombudsman. The accounting division identifies and evaluates financial risks in close co-operation with the operating units. The Ombudsman provides written principles for overall risk management such as interest-rate risk, use of financial instruments and investing excess liquidity.

The Ombudsman's activities do not expose to foreign exchange risk, credit risk and liquidity risk. For interest-rate risk, except for the short term bank deposits which bear interest at fixed rates as set out in note 6 below, The Ombudsman has no other significant interest-bearing assets and liabilities. Accordingly, The Ombudsman's income and operating cash flows are substantially independent of changes in market interest rates.

4 Prepaid operating leases

	2006	**2005**
Opening	70,596,176	71,990,396
Amortisation of prepaid operating lease	(1,394,220)	(1,394,220)
	69,201,956	70,596,176

The Ombudsman's interests in leasehold land represent prepaid operating lease payments and their net book values are analysed as follows:

	2006	**2005**
In Hong Kong held on:		
Leases of over 50 years	69,201,956	70,596,176

5 Property, plant and equipment

	Building	Leasehold improvements	Office Furniture	Office equipment	Computer equipment	Motor vehicle	Total
At 1st April 2004							
Cost	16,800,000	10,999,695	1	1	1	1	27,799,699
Accumulated depreciation	(862,438)	(1,723,788)	-	-	-	-	(2,586,226)
Net book amount	15,937,562	9,275,907	1	1	1	1	25,213,473
Year ended 31st March 2005							
Opening net book amount	15,937,562	9,275,907	1	1	1	1	25,213,473
Price adjustment	-	120,105	-	-	-	-	120,105
Depreciation	(420,000)	(1,130,802)	-	-	-	-	(1,550,802)
Closing net book amount	15,517,562	8,265,210	1	1	1	1	23,782,776
At 31st March 2005							
Cost	16,800,000	11,119,800	1	1	1	1	27,919,804
Accumulated depreciation	(1,282,438)	(2,854,590)	-	-	-	-	(4,137,028)
Net book amount	15,517,562	8,265,210	1	1	1	1	23,782,776
Year ended 31st March 2006							
Opening net book amount	15,517,562	8,265,210	1	1	1	1	23,782,776
Additions	-	40,880	4,460	160,650	101,846	-	307,836
Depreciation	(420,000)	(1,114,936)	(42)	(10,605)	(12,064)	-	(1,557,647)
Closing net book amount	15,097,562	7,191,154	4,419	150,046	89,783	1	22,532,965
At 31st March 2006							
Cost	16,800,000	11,160,680	4,461	160,651	101,847	1	28,227,640
Accumulated depreciation	(1,702,438)	(3,969,526)	(42)	(10,605)	(12,064)	-	(5,694,675)
Net book amount	15,097,562	7,191,154	4,419	150,046	89,783	1	22,532,965

Note:
As at 31st March 2005, the costs incurred for leasehold improvements were still under negotiation between the supplier and Government. Accordingly, The Ombudsman, by reference to the costs estimated by the Architectural Services Department of Government, had made a price adjustment to reflect revised costs.

6 Cash at banks and in hand

	2006	2005
Cash at bank and in hand	2,380,659	1,389,012
Bank deposits with original maturity less than 3 months	23,640,000	127,870,000
Cash and cash equivalents	26,020,659	129,259,012
Bank deposits with original maturity over 3 months	141,168,516	-
	167,189,175	129,259,012

The average effective interest rate on bank deposits was 4.3% (2004: 2.0%); these deposits have an average maturity of 6 months (2004: 15 days).

7 Government subventions

The amounts represent the funds granted by Government for prepaid operating lease payments, the purchase of buildings and leasehold improvements and are recognised as income on a straight line basis over the period of the lease term or the useful life of the assets, which are estimated to be 54 years, 40 years and 10 years, respectively.

	2006	2005 (Restated)
Government subventions	91,452,748	94,378,948
Current portion of government subventions	(2,926,200)	(2,926,200)
	88,526,548	91,452,748

8 Expenses by nature

Expenses included in operating expenses are analysed as follows:

	2006	2005 (Restated)
Auditors' remuneration	40,000	27,500
Depreciation of property, plant and equipment	1,557,647	1,550,802
Amortisation of prepaid operating lease	1,394,220	1,394,220
Operating lease rentals in respect of land and buildings	104,000	115,200
Property and equipment (costing less than HK$1 million individually) written off	-	857,514
Employee benefit expense (Note 9)	43,814,019	44,264,534

9 Employee benefit expense

	2006	2005
Salaries and allowances	38,026,840	38,483,542
Contract gratuity	4,279,366	4,388,673
Pension costs - MPF scheme	841,420	802,082
Unutilised annual leave	64,341	113,522
Other employee benefit expenses	602,052	476,715
	43,814,019	44,264,534

10 Key management compensation

	2006	2005
Salaries and other short-term employee benefits	9,740,018	9,664,521
Post employment benefits	1,361,709	1,354,775
	11,101,727	11,019,296

11 Taxation

The Ombudsman is exempt from taxation in respect of the Inland Revenue Ordinance in accordance with the Schedule 1A Section 5(1) of the Ombudsman Ordinance.

12 Net cash generated from operating activities

	2006	2005 (Restated)
Surplus for the year	36,459,892	37,546,658
Adjustments for:		
- Interest income	(5,746,979)	(741,441)
- Depreciation of property, plant and equipment	1,557,647	1,550,802
- Amortisation of prepaid operating lease	1,394,220	1,394,220
- Amortisation of Government subventions	(2,926,200)	(2,945,022)
Changes in working capital		
- Deposits and prepayments	513,983	(177,843)
- Other payables and accruals	117,331	(1,292,845)
- Contract gratuity payable	2,396,663	(437,972)
Net cash generated from operating activities	33,766,557	34,896,557

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History in Brief

Date	Event
1988	
20 July	The Commissioner for Administrative Complaints (COMAC) Bill was passed by the Legislative Council (LegCo)
1989	
1 February	The COMAC Ordinance was enacted First Commissioner Mr Arthur Garcia, JP assumed office
1 March	The Office of COMAC became operational with staff seconded from Government
15 November	COMAC became a member of the International Ombudsman Institute
1993	
21 July	Legislative review completed, the COMAC (Amendment) Bill was introduced into LegCo
1994	
1 February	Second Commissioner Mr Andrew So, JP assumed office
24 June	The COMAC Ordinance was amended : • to enable the public to lodge complaints directly, instead of by referral from LegCo Members • to extend the jurisdiction to some major statutory bodies • to empower the Commissioner to publish anonymised investigation reports • to empower the Commissioner to initiate direct investigation
30 June	Advisers were appointed to provide expert advice and professional opinion
1 July	Chinese title of the Commissioner was changed to「申訴專員」and the Office to「申訴專員公署」
1995	
1 March	Jurisdiction was extended to investigation into alleged breach of Code on Access to Information
24-26 October	The Commissioner hosted the 15th Australasian and Pacific Ombudsman Conference and the International Ombudsman Symposium

History in Brief

Date	Event
1996	
1 March	Non-official Justices of the Peace (JPs) were enlisted in a JPs Assistance Scheme
16 April	The Ombudsman's Office participated in the establishment of the Asian Ombudsman Association and became a founding member
12-13 June	First Complaint Management Workshop for public officers was organised
5 September	Resource Centre was opened
24 October	The Ombudsman was elected to the Board of Directors of the International Ombudsman Institute
27 December	English titles were changed to "The Ombudsman" and "Office of The Ombudsman"
1997	
1 April	Mediation service was launched as an alternative dispute resolution method
25 July	The Ombudsman's Awards were introduced to acknowledge public organisations handling complaints positively
1998	
8 May	The Ombudsman was elected Secretary to the Asian Ombudsman Association
1999	
1 April	Third Ombudsman Ms Alice Tai, JP, assumed office
22 July	The Ombudsman's Awards were extended to acknowledge public officers' contribution towards better quality services
2000	
27 July	The Ombudsman's Awards were further extended to acknowledge public officers handling complaints professionally
2 November	The Ombudsman was elected to the Board of Directors of the International Ombudsman Institute
2001	
28 March	Telephone complaint service was introduced

History in Brief

Date	Event
19 December	The Ombudsman (Amendment) Ordinance 2001 came into operation : • to establish The Ombudsman as a corporation sole with full powers to conduct financial and administrative matters • to empower The Ombudsman to set terms and conditions of appointment for staff • to adopt systems and processes separate from Government
2002	
6 September	Office moved to permanent accommodation at Shun Tak Centre in Sheung Wan
16 October	The Ombudsman was elected Secretary to the International Ombudsman Institute
2003	
November	Training in mediation was provided for public officers to promote such service among public organisations
2004	
1 April	Ms Alice Tai, JP, started her second term (2004 – 2009) as The Ombudsman
10 September	The Ombudsman was re-elected as the Secretary of the International Ombudsman Institute
13 December	With the departure of the last civil service secondee, this Office was staffed by a workforce entirely appointed by The Ombudsman under The Ombudsman Ordinance
2005	
24 October	A "Memorandum of Administrative Arrangements" was signed between the Director of Administration and The Ombudsman to set out the general principles and guidelines governing the administrative arrangements for this Office
28 November – 1 December	The Ombudsman hosted the 9th Asian Ombudsman Association Conference





This has been quite an eventful year. My Office proudly hosted the 9th Asian Ombudsman Association Conference from 28 November to 1 December 2005 on the theme "Evolving Ombudsman Offices". Some 90 delegates from the region and beyond had a useful exchange on how to resolve present problems and face future challenges.

Last year, I mentioned that we had initiated a review of my jurisdiction, based on our operational experience and overseas practices. We have studied the background to our inception, trawled relevant overseas literature, examined the criteria for inclusion of public bodies in my purview and clarified the legislative intent for some of the prohibitions on my investigative powers. We will proceed to formulate proposals for further consideration.

Meanwhile, community response to our services has been heartening. Public interest and press comments have given us both encouragement and points for reference. For instance, over the past few years, my Office has been receiving over 4,000 complaints annually. A legal scholar has suggested that our continuous efforts have established our Office as a creditable body. Like Legislative Council Members, he has advocated extending our jurisdiction to cover complaints about human rights concerns.

At present, my Office does not "promote" human rights as such. However, as many Government services — such as housing, education, social welfare, medical and health care, and legal aid — are human rights related, The Ombudsman in effect keeps a watching brief and safeguards citizens' rights by ensuring reasonableness, fairness and legality in the provision of such services. When investigating alleged acts of maladministration, our Office must take account of all relevant laws and policies including any international human rights treaty applicable to Hong Kong.

In our jurisdictional review, we will explore whether and how The Ombudsman may assume a more active role in monitoring Government actions in this connection.

In fairness to all parties concerned and for proper use of resources, I have always insisted on two prerequisites for commencing inquiries: *prima facie* evidence of maladministration and complainants' consent regarding personal data. However, some complainants take time to provide either, or even both. This at times makes it difficult for us to meet our performance pledges.

On the suggestion of Legislative Council Members, we have reviewed our pledges and revised the formula for measuring our processing time. From 1 April 2006, processing time will begin to run when both a *prima facie* case and complainants' consent are to hand.

To foster better understanding with Government departments, this year I initiated a round of meetings with their directorate for exchange of views on issues of mutual interest. I hope to enhance my insight into their organisational culture in complaint management and aim to explain our mission in improving public administration.

In this connection, let me rehearse some of my reflections on public administration based on observation from our investigations.

Public services are increasingly being contracted out. Citizens directly affected are often ignorant about the implications as regards the delineation of responsibility, particularly when contractors fail to deliver. By failing to manage customers' expectations and to define and explain clearly the operational arrangements, a department could end up getting as involved as its contractors. Departments are ultimately accountable for services which have been contracted out. To be mindful of the need to closely monitor contractors' performance, give guidance and support where necessary and, above all, managing public expectations, are all important elements to make contracting-out work.

On the other hand, good customer service is not keeling over all and sundry complaints or bending to every whim of a client, however unreasonable. That is **not** quality service, just unthinking quiet surrender. In the extreme, this may well encourage abuse of services or even disrespect for the authorities.

In short, good public administration is about responsive and responsible Government, open and accountable officers, fair and flexible practices.

Who We Are, What We Can Do and Cannot

1.1 The Office of The Ombudsman is the community's independent and impartial watchdog over public administration in Hong Kong. Established in 1989 as the Office of The Commissioner for Administrative Complaints, it was Government's response to public demand for a simple, economical and effective mechanism for protecting citizens' fundamental rights. As a statutory body established under The Ombudsman Ordinance ("the Ordinance"), Cap 397 of the Laws of Hong Kong, our Office formally severed links with Government systems in December 2001 and adopted our own separate procedures and practices.

1.2 Although appointed by the Chief Executive of the Hong Kong Special Administrative Region, The Ombudsman is not a servant or agent of Government. She is empowered to act in accordance with her own discretion and her decision is final. However, her decisions are subject to scrutiny by the Courts through judicial review.

Objectives

1.3 Our Office operates to the objectives of:

- seeking out the facts for justice and remedy; and
- improving the quality and efficiency of public administration.

Jurisdiction and Functions

1.4 The Ombudsman investigates complaints of maladministration by the Government departments and public bodies listed in Part I of Schedule 1 to the Ordinance (see **Annex 1**). She may also initiate direct investigation into significant issues and areas of maladministration in the absence of complaints.

Fig. 1.1

Definition of Maladministration – section 2 of the Ordinance

"Maladministration" means inefficient, bad or improper administration and, without derogation from the generality of the foregoing, includes -

(a) unreasonable conduct, including delay, discourtesy and lack of consideration for a person affected by any action;

(b) abuse of any power (including any discretionary power) or authority including any action which –

(i) is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory; or

(ii) was based wholly or partly on a mistake of law or fact; or

(c) unreasonable, unjust, oppressive or improperly discriminatory procedures

1.5 The Hong Kong Police Force, the Independent Commission Against Corruption and a few other organisations in Part II of Schedule 1 are not subject to our investigation. Nevertheless, The Ombudsman is specifically empowered by section 7(1)(b) of the Ordinance to investigate any action by them not in compliance with the Code on Access to Information.

Actions Not for Investigation

1.6 The Ombudsman's purview is not all-pervasive. Section 8, read with Schedule 2, of the Ordinance specifies actions not subject to The Ombudsman's investigation.

Fig. 1.2

Examples of Actions not Subject to Investigation – Schedule 2 to the Ordinance

- Security, defence or international relations
- Legal proceedings or prosecution decisions
- Exercise of powers to pardon criminals
- Contractual or commercial transactions
- Personnel matters
- Grant of honours, awards or privileges by Government
- Actions by the Chief Executive personally
- Imposition or variation of conditions of land grant
- Actions in relation to Hong Kong Codes on Takeovers and Mergers and Share Repurchases
- Crime prevention and investigation actions by Hong Kong Police Force or Independent Commission Against Corruption

1.7 Government policies and professional judgments are also outside The Ombudsman's jurisdiction as they are not administrative actions *per se*. As these matters are often subjects of complaint, The Ombudsman would scrutinise them carefully for any administrative aspects that fall within her jurisdiction. These include work processes, procedures and practices in the execution of policies and the exercise of discretion.

Restrictions

1.8 Section 10(1) prescribes restrictions where The Ombudsman shall not conduct an investigation.

Fig. 1.3

Major Restrictions on Investigation of Complaint – section 10(1) of the Ordinance

- Complainant having knowledge of subject of complaint for more than two years
- Complaint made anonymously
- Complainant not identifiable or traceable
- Complaint not made by person aggrieved or suitable representative
- Subject of complaint and complainant having no connection with Hong Kong
- Statutory right of appeal or remedy by way of legal proceedings (except judicial review) being available to complainant

1.9 However, in certain circumstances, The Ombudsman may find it justified to exercise her discretion whether or not to conduct, or to discontinue, an investigation into a complaint. For example, a complaint may be taken up if the complainant is able to explain why he or she could not have lodged the complaint within two years or resorted to an available right of appeal.

1.10 Section 11 empowers The Ombudsman to undertake or continue an investigation even though the complainant has withdrawn the complaint.

1.11 Furthermore, The Ombudsman may decide not to investigate a complaint under the following circumstances:

Fig. 1.4

Circumstances Where The Ombudsman may Decide not to Investigate – section 10(2) of the Ordinance

- Investigation of similar complaints before revealed no maladministration
- Subject of complaint is trivial
- Complaint is frivolous or vexatious or is not made in good faith
- Investigation is, for any other reason, unnecessary

1.12 If The Ombudsman decides not to undertake or continue an investigation into a complaint, she will inform and explain to the complainant.

Complaint Handling

Mode of Complaint

2.1 Complaints may come to us by letter or on complaint forms (available from our Office or our homepage) by post or by fax. We also accept complaints via email, but subsequent correspondence has to be by post to ensure security of information and to guard against unintended disclosure. We will make an exception if the complainant can communicate electronically with digital signature under proper electronic certification.

2.2 Members of the public are welcome to visit our Office to make enquiries or lodge complaints. Complainants are received by our duty officers. Where they are unable to write up their own cases, the duty officer may take down details for their subsequent verification.

Fig. 2.1



Appointment Card

2.3 For simple initial cases, we offer a service for complaints by telephone. The conversation is recorded on tape and then written up for verification with the complainant by post. To avoid overloading the telephone lines, such complaints are limited generally to those that can be verbalised within 15 minutes and involve not more than two organisations or much documentary evidence.

2.4 Complainants must always give their name and address as the law requires that they be identifiable and traceable (see **Fig. 1.3**) before The Ombudsman may investigate.

Assessment

2.5 An Assessment Team scrutinises all in-coming complaints to ascertain whether they come within the statutory purview of The Ombudsman and whether they have a *prima facie* case to warrant investigation. Where The Ombudsman decides not to pursue a case, we aim to notify complainants within 15 working days, (see **Fig. 3.9** and **Annex 4** for our performance pledges). Invariably we will, where possible, advise where and how they may seek assistance or redress. For complaints “screened out” because the complainants are anonymous or unidentifiable, we do not simply ignore them but examine them for any pattern of systemic or systematic maladministration. This may provide insight into certain areas of public administration and at times prompt topics for direct investigation (see **paras. 2.20 - 2.29**).

2.6 Complaints with a *prima facie* case within The Ombudsman’s purview are “screened in” for examination by one of our four investigation teams. Each team, headed by a Chief Investigation Officer working to one of the two Assistant Ombudsmen, handles cases on a number of Government departments and public bodies.

Preliminary Inquiries

2.7 We conduct preliminary inquiries under section 11A of the Ordinance to determine whether a full investigation is necessary. Such inquiries may come under our Internal Complaint Handling Programme ("INCH") or may take the form of Rendering Assistance/Clarification ("RAC"), as outlined below:

Fig. 2.2

Preliminary Inquiries

Type	Method
INCH	With the complainant's consent, a simple case is referred to the organisation concerned for investigation and reply direct to the complainant, with a copy to us. The Ombudsman may request the organisation to provide specific information in its reply, monitors the progress and scrutinises the reply, intervening where it is not satisfactory. In the event of the latter, we may take up the case by RAC or full investigation.
RAC	The Office collects key facts relating to the case. If the facts fully explain the matter under complaint, we will present the findings with observations to the complainant and suggestions to the organisation concerned on remedial action and improvement measures, where appropriate. If further inquiries are called for, a full investigation may be conducted.

2.8 Preliminary inquiries are a useful means for concluding cases of less complexity. Such inquiries generally take less time as they are not subject to the statutory formalities of full investigation. Where appropriate, we will make suggestions for improvement or remedy and monitor their implementation by the organisations concerned. This is in line with our practice with full investigation.

Mediation

2.9 With complaints that involve only minor or no maladministration, The Ombudsman may process by mediation under section 11B of the Ordinance. This form of alternative dispute resolution has to be with the consent of both the complainant and the organisation concerned. The two parties meet to explore a mutually acceptable solution to the matter under complaint. Our investigators, trained in mediation, facilitate the process with objectivity.

2.10 If mediation cannot resolve matters, our Office may initiate preliminary inquiries or a full investigation. In such event, another investigator will be assigned to handle the case afresh. The aim is to ensure impartiality as well as confidentiality of the information provided by the parties during mediation.

Full Investigation

2.11 For complex cases involving issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, The Ombudsman will order a full investigation.

2.12 This necessitates extensive and intensive probing for comprehensive evidence collection. Under section 13, The Ombudsman may summon any person for examination or require such person to furnish information and produce any document or object in his possession or under his control. She may also make site inspections (section 20). At times, we consult members of our Panel of Professional Advisers, all experts of repute with good standing in the legal, medical or engineering fields (see **Annex 14**) appointed under section 6A of the Ordinance.

2.13 When the draft investigation report is ready, the organisation(s) concerned and any individual(s) criticised or adversely affected will be invited to comment (section 12(6)). The final report will be given to the head(s) of the organisation(s) for information and implementation of our recommendations.

Outcome of Investigation

2.14 In the investigation report, the complaint is classified according to how far the allegations of maladministration are founded: "substantiated", "partially substantiated" or "not substantiated". In some cases, although the specific allegations in the complaint are not substantiated, other significant acts or aspects of maladministration are identified. These are then classified as "substantiated other than alleged", to reflect the gravity of the maladministration thus unearthed. The different categories of outcome are defined in the **Glossary of Terms** (see **Annex 2**).

Implementation of Recommendations

2.15 In recommending administrative remedies to the organisation(s) concerned, we aim to make for more open and client-oriented, transparent and accountable public administration. Heads of organisations have a duty to report at regular intervals the progress of their implementation of the recommendations.

2.16 Unlike Court verdicts, The Ombudsman's recommendations are not binding. However, where the head of the organisation disagrees with the findings or refuses to accept the recommendations, The Ombudsman may submit a report to the Chief Executive. Furthermore, where an organisation fails to implement or to act adequately on any recommendation, The Ombudsman may also report to the Chief Executive. In such event, section 16(6) of the Ordinance requires that, within one month or such longer period as the Chief Executive may determine, a copy of the report be laid before the Legislative Council.

Secrecy Requirement

2.17 The Ombudsman and her staff as well as the Advisers are bound by law, under penalty of a fine and imprisonment, to maintain secrecy. All matters that come to our knowledge in the exercise and execution of our functions. The aim is to ensure that any person or organisation providing information to our Office can do so without reserve and without fear of reprisal from the disclosure of their identity or related data.

2.18 Except for anonymised publication of investigation reports selected for the public interest involved, it is our firm practice not to respond to any enquiry from third parties on individual complaints.

2.19 The secrecy code is the cornerstone of the ombudsman system. It is strictly observed by all of us in discharging our duties.

Direct Investigation

2.20 Under section 7(1)(ii) of the Ordinance, The Ombudsman may initiate direct investigation in the absence of complaints. This is an important function because it enables The Ombudsman to review matters of moment at a macro level, as opposed to individual cases, and examine systems with systemic problems or widespread deficiency.

Selection of Issues

2.21 Subjects for direct investigation are carefully selected by a standing panel chaired by the Deputy Ombudsman and comprising the two Assistant Ombudsmen and a small Direct Investigation Team.

2.22 A direct investigation may be prompted by significant topical issues of community concern, implementation of new or revised Government policies or repeated complaints on particular matters including those "screened out" during our assessment process, which show some pattern of systemic problems or systematic maladministration (see **para. 2.5**). Common features of matters for direct investigation are:

- of community interest, concern, aspirations or expectations;
- of considerable scale or in some number;
- not under examination by another agency; and
- not for the courts or tribunals.

DI Assessment

2.23 Before we formally launch a direct investigation, we may at times conduct an initial assessment ("DI assessment"). For this purpose, we research relevant information publicly available from, say, annual reports and websites, legislation and media reports. We may also seek information from the organisation(s) direct. If such assessment points to the need for further study, we will formally notify the head(s) of the organisation(s).

2.24 Where our DI assessment finds no significant maladministration, or proactive improvement has been made by the organisation(s) concerned, we will not initiate a direct investigation but simply write up our findings as a report on a "mini-DI" and forward it to the organisation(s) for comment. Such report outlines the background to the issue, an appraisal of public concern, our observations on the role and the action (especially any remedial action) by the organisation(s) concerned. Where appropriate, we will make recommendations for improvement.

Investigation Methodology

2.25 The Ombudsman's powers for direct investigation are similar to those for investigations into complaints. However, unlike individual complaints, it is our established practice to declare publicly the initiation of a direct investigation and invite views from relevant sectors as well as the community at large. This is justified as the subjects are invariably of public interest.

2.26 We normally study all relevant files and documents from the organisation(s) concerned, hold discussions with the subject officer(s) and possibly other stakeholders, correspond with them for supplementary information and clarification, as well as making site visits for first-hand observation. As with investigation of complaints, we may also consult the Advisers.

Fig. 2.3



Internal Discussion

2.27 Besides writing to seek comments, we often discuss the draft investigation report face-to-face with senior officers of the organisation(s) before finalisation. Where appropriate, their comments on our findings and recommendations will be incorporated in the report.

2.28 Our recommendations relate principally to improvement of administrative systems and procedures. However, from time to time, where policies are outdated or are conducive to inequity, The Ombudsman may offer some comments although they are generally not matters for our investigation.

Publication of Reports

2.29 As a general rule, The Ombudsman publishes reports of direct investigation for public information through the media. Where cases are announced in the public interest, we anonymise all individuals involved in the investigation.



Chapter 3 How We Fare

Enquiries and Complaints Processing

3.1 During the year, we received 14,633 enquiries and 4,266 complaints.

3.2 Most complaints were lodged by letters through the post, though email has become more common, accounting for 19.5% of all complaints this year, compared with 17.7%, 15.9% and 14.0% in 2004/05, 2003/04 and 2002/03 respectively. For security of case information, as required by the law, we always ask complainants for their full name and postal address so that we may correspond with them by post unless the complainant can communicate electronically with digital signature under proper electronic certificate (see **para. 2.1** of Chapter 2).

Fig. 3.1



Complaints can be lodged by phone

Fig. 3.2

Enquiries and Complaints Received in the Past Five Years

Year *	Enquiries	Complaints
2001/02 (10$^{1}/_{2}$months)	12,900	3,736
2002/03	14,298	4,382
2003/04	12,552	4,661
2004/05	11,742	4,654
2005/06	14,633	4,266

* *Reporting Year revised since delinking in December 2001.*

Fig. 3.3

Mode of Lodging Complaints

Mode	2002/03	2003/04	2004/05	2005/06
In person	425	324	396	231
In writing –				
by complaint form	1,270	722	934	613
by letter through post	682	1,634	1,599	1,303
by fax	978	972	615	865
by email	613	742	821	902
By telephone	414	267	289	354
Total	**4,382**	**4,661**	**4,645**	**4,266**

3.3 This year we processed a total of 4,985 cases, of which 4,309 were concluded, compared with 5,742 processed and 5,023 concluded in the previous year. Cases screened in were processed by mediation, preliminary inquiries or full investigation. Rendering Assistance/ Clarification ("RAC") (see **para. 2.7** of Chapter 2) has remained our commonest mode of inquiry as it is more expeditious and, in most cases, just as effective in establishing the facts : 86.2% of cases screened in were concluded this way.

Fig. 3.4

Screened-in Complaints Concluded in the Past Five Years

	Reporting Year *				
	2001/02 ($10^1/_2$ months)	**2002/03**	**2003/04**	**2004/05**	**2005/06**
Preliminary Inquiries	1,567	2,172	1,834	1,873	1,758
– *INCH*	*353*	*176*	*203*	*209*	*185*
– *RAC*	*1,214*	*1,996*	*1,631*	*1,664*	*1,573*
Full Investigation	331	124	284	125	55
Mediation	19	6	7	6	12
Total	**1,917**	**2,302**	**2,125**	**2,004**	**1,825**

* *Reporting Year revised since delinking in December 2001.*

Cases Not Pursued

3.4 As in previous years, quite a significant proportion of complaints was not pursuable, classified into two main categories as follows:

(a) those screened out, either because they were outside our jurisdiction or because they could or should not be pursued under section 10 of The Ombudsman Ordinance, and

(b) those withdrawn by complainants, or discontinued by us, after being screened in for inquiry.

3.5 We have analysed the complaints screened out under (a) above. Quite a few are not pursued not because the issues are outside my jurisdiction or falling within some specific restriction under section 10 of the Ordinance but because, under section 10(2)(d) of the Ordinance, I consider further inquiry unnecessary for the reasons below:

- a *prima facie* case of maladministration is not established;
- the complainant is merely expressing opinions or seeking assistance;
- the complainant has refused to consent to disclosure of personal data, necessary for our inquiries;
- the organisation concerned is already taking action on the matter; or
- there is another authority for the matter.

Such complaints are now classified as cases "not undertaken" and grouped under "complaints not pursued", together with cases discontinued or withdrawn.

3.6 Complainants may request to withdraw their complaints for personal reasons. One reason commonly given is that the organisation concerned has already taken action to the complainant's satisfaction after lodgement of the complaint. We may also discontinue our inquiries into a case in certain circumstances: for example, where we find or are informed that legal proceedings have been initiated on the same matter or where the complainant has become untraceable.

3.7 A detailed breakdown of our caseload for the past five years is in **Table 1**.

Major Causes for Complaint

3.8 The four most mentioned causes for complaint were:

- error, wrong decision/advice;
- failure to follow procedures, delay;
- negligence, omissions; and
- ineffective control.

They were also the top four forms of maladministration substantiated after our full investigation. However, as shown in **Fig. 3.5**, while "error, wrong decision/advice" was the most mentioned cause for complaint, it ranked only third in the list of maladministration substantiated. This difference may be due to the fact that decisions by public authorities have affected an individual and are thus perceived to be "wrong", though proper and justified on policy and general principle.

Fig. 3.5

Causes for Complaint and Forms of Maladministration Substantiated

Nature of allegation / maladministration identified	% among all concluded cases@	% among all acts of maladministration substantiated#
Error, wrong decision/advice	23.8%	13.9%
Failure to follow procedures, delay	14.7%	30.6%
Negligence, omissions	11.1%	11.1%
Ineffective control	10.0%	19.4%
Disparity in treatment, unfairness, selective enforcement	7.3%	2.8%
Lack of response to complaint	6.4%	11.1%
Staff attitude	5.8%	2.8%
Faulty procedures	4.8%	5.6%
Abuse of power	4.0%	2.8%
Others	12.1%	0%

@ *A total of 4,309 were concluded in 2005/06, including cases outside jurisdiction, restricted or concluded after preliminary inquiries, mediation or full investigation (see Table 1).*

\# *36 allegations were substantiated or partially substantiated after full investigation in 2005/06.*

3.9 The Housing Department and the Food and Environmental Hygiene Department continued to top the list of organisations most complained about, attracting respectively 14.0% and 8.8% of all the complaints. This is understandable because those two departments provide services that directly impact on almost all facets of people's livelihood. This year, the Buildings Department rose to third place on the list (accounting for 5.7% of the complaints), from the eighth position (with 4.0% of the complaints) last year. The Environment, Transport and Works Bureau and the Home Affairs Department dropped out from the top ten most complained about (see **Table 4**), whereas the Water Supplies Department and the Immigration Department, not one of the "top ten" last year, ranked eighth and ninth respectively.

Outcome of Inquiries

3.10 In the year under report, full investigation was conducted on 55 complaints. On completion, we classify a complaint as substantiated, partially substantiated or unsubstantiated. In exceptional circumstances, a complaint may be substantiated other than alleged (see **para. 2.14** of Chapter 2). The outcomes of fully investigated complaints are summarized in **Fig. 3.6** below.

Fig. 3.6

Substantiation Rates of Complaints Concluded by Full Investigation

Classification	No. of Complaints	Percentage
Substantiated	13	24.5%
Partially substantiated	14	26.4%
Unsubstantiated	26	49.1%
Total	**53 ***	**100.0%**

* *Excluding two complaints withdrawn by the complainants mid-stream.*

3.11 Complaints concluded after preliminary inquiries are not classified in terms of whether the complaint is substantiated or not. However, among the 1,573 cases concluded by RAC, we required remedial action by the organisations concerned in 269 cases. More details are in **Table 8.**

Fig. 3.7

Outcome of RAC Cases

Outcome	No. of Complaints	Percentage
Remedial Action Required	269	17.1%
No evidence of maladministration	1,270	80.7%
Inconclusive	34	2.2%
Total	**1,573**	**100.0%**

Direct Investigation

3.12 During the year, we completed four direct investigations and six direct investigation assessments. Three direct investigations were in progress as at the end of the reporting year.

Fig. 3.8

(a) Direct Investigation Reports Completed in 2005/2006

Date	Subject
1 April 2005	Letting of Market Stalls by Auction
30 August 2005	Monitoring of Property Services Agents by Housing Department
17 January 2006	Monitoring of Assigned-out Cases by Legal Aid Department
31 March 2006	Medical Fee Waiver System

(b) Direct Investigation Assessments Completed in 2005/2006

Date	Subject
5 July 2005	Mechanism of Equal Opportunities Commission for Handling Conflict of Interests
23 September 2005	Collection of Government Rent
5 January 2006	Consolidation of High Cost and Under-utilized Primary Schools
16 February 2006	Handling of HKCEE Examination Papers 2005
3 March 2006	Planning of Swimming Pools
30 March 2006	Prevention of Abuse of Protection of Wages on Insolvency Fund

(c) Direct Investigations in Progress	
Date Declared	**Subject**
26 August 2004	Administration of the Mid-Levels Administrative Moratorium
1 September 2005	Assessment of Children with Specific Learning Difficulties
20 October 2005	Processing of Disability Allowance Applications

Recommendations

3.13 On conclusion of full investigations, I make recommendations where improvement is called for, irrespective of whether or not the complaint is substantiated. Even when cases are concluded by preliminary inquiries, I will still make suggestions if appropraite. Such measures fall broadly into two categories, namely :

(a) Redress of grievances – to right specific wrongs, including remedial measures, immediate and longer-term;

(b) Administrative improvement – to improve the administration of an organisation in general or in specific areas, such as changes to systems, procedures and practices for removing administrative errors, loopholes or deficiencies.

3.14 I respect the relevant authorities as guardian of their policies. However, I do from time to time comment on policies, to help Government focus on possibly deficient and outdated aspects or to generate public debate.

3.15 Although complaints are often directed against the actions or attitude of individual officers, our main objective is to enhance the general quality of public administration. We consider disciplinary action against individual officers found to be at fault a matter for the heads of their organisations. Accordingly, our recommendations broadly speaking are rehabilitative and preventive rather than punitive in nature.

3.16 On conclusion of a direct investigation, initiated without complaint, my recommendations invariably aim to improve administration.

3.17 The 55 cases concluded by full investigation and the four direct investigations completed in the reporting year resulted in 56 and 54 recommendations respectively, making a total of 110. So far 104 (or 94.5%) of them have been accepted by the organisations for implementation; 6 (or 5.5%) are still under consideration.

3.18 I also suggest systemic improvement in cases concluded by RAC. These numbered 218 this year, compared with 181 last year. A breakdown of these suggestions by organisations concerned is in **Table 8**.

Our Performance

3.19 Our performance pledges and our achievement are detailed in **Annex 4**.

3.20 During the year, we were able to meet our pledges fully in respect of handling enquiries and arranging group visits and talks. As for complaint processing, our performance is summarised in **Fig. 3.9** below:

Fig. 3.9

(a) Response Time for Acknowledgement/Initial Assessment

Year *	Response Time		
	Within 5 working days (target : 80%)	Within 6-10 working days (target : 20%)	More than 10 working days
2001/02 ($10^1/_2$ months)	92.7%	5.8%	1.5%
2002/03	77.6%	11.8%	10.6%
2003/04	66.2%	30.7%	3.1%
2004/05	94.0%	4.2%	1.8%
2005/06	99.75%	0.22%	0.03%

(b) Processing Time for Cases Outside Jurisdiction or Under Restriction

Year *	Response Time		
	Within 10 working days (target : 70%)	Within 11-15 working days (target : 30%)	More than 15 working days
2001/02 ($10^1/_2$ months)	58.9%	37.6%	3.5%
2002/03	60.7%	37.1%	2.2%
2003/04	71.5%	22.1%	6.4%
2004/05	62.6%	34.4%	3.0%
2005/06	40.9%	57.3%	1.8%

(c) Processing Time for Other Cases Concluded

Year *	Response Time		
	Less than 3 months (target : 60%)	Within 3-6 months (target : 40%)	More than 6 months
2001/02 ($10^1/_2$ months)	52.2%	38.5%	9.3%
2002/03	57.5%	39.7%	2.8%
2003/04	51.1 %	45.7%	3.2%
2004/05	43.3%	53.7%	3.0%
2005/06	56.0%	41.0%	3.0%

* *Reporting Year revised since delinking in December 2001.*

3.21 During the reporting period, we improved on the percentage of complaints concluded in three months, though it still fell short of our target by 4.0%. Besides, 3.0% of the completed cases again did not meet the six-month performance pledge, as in the previous year. Longer processing time was necessary in some cases because:

(a) complexity of the case necessitated more elaborate investigation process;

(b) voluminous documents required extra time to analyse and distill for relevant information;

(c) complainee organisations required more time to collate their information;

(d) complainants took time to give –

  (i) consent for us to obtain their personal data from, or to copy information supplied by them to, complainee organisations; or

  (ii) supplementary information essential for establishing a *prima facie* case of their complaint;

(e) new developments or supply of further material emerged mid-stream; and

(f) complainants or organisations concerned challenged our findings.

3.22 At the meeting of Members of the Legislative Council with The Ombudsman on 14 December 2005, a Member noted from our 2004-05 Annual Report that we had been unable, that year, to comply with our pledge of concluding 60% of the cases within three months. He suggested that the pledge be critically reviewed and as necessary, revised.

3.23 We have since reviewed our pledge and noted that, regarding (d) in **para. 3.21**, we cannot really start our inquiries without the complainant's consent in most cases or without a *prima facie* case. To measure our performance in a more meaningful and realistic way against our pledge, from the next reporting year onwards, we will start clocking our processing time only after the necessary consent and key information for a *prima facie* case are both available.

Overview

3.24 Complaint caseload is subject to seasonal fluctuations, often as a result of events in the media. Generally speaking, complaints tend to flow in after our press conferences announcing our investigation findings or declaring new inquiries. News reports about major deficiencies in public administration also generate complaints. In September 2005, we launched our new publicity campaign. This occasioned an upsurge of 520 complaints, a monthly high for the year, against a monthly average of 355.5 cases.

3.25 Overall, my Office continued to have a busy year during the reporting period and do well in meeting our performance pledge. However, we also found it useful to review the way we measure our performance against our pledge.

How We Foster Improvement and What Problems We Face

Enhancing Quality of Administration

4.1 On conclusion of inquiries, where warranted, invariably I recommend measures for administrative improvement and for redress of grievances (see **Chapter 3**). This year, I made 110 recommendations after full or direct investigations and 218 suggestions in cases concluded by RAC. These aim to help the public organisations concerned enhance their administration and improve their services. Most of them have been accepted by the organisations concerned.

4.2 Such measures fall broadly into six areas. Some examples are given in **Fig.4.1**.

Fig. 4.1

(a) Guidelines for clarity, consistency or efficiency in operation

Organisation	Administrative Enhancement
Agriculture, Fisheries and Conservation Department ("AFCD")	Operational guidelines issued on inspection relating to applications for Temporary Exhibition Permits involving animals
Food and Environmental Hygiene Department ("FEHD")	Procedural guidelines issued on the return of seized articles to owners, to avoid allegations of abuse of authority or favouritism
Environmental Protection Department ("EPD")	Code of Practice revised so that Lands D will consider environmental factors in greater depth before granting short-term tenancies
Hospital Authority ("Hosp A")	Guidelines introduced for referring inmates to hospital for operation to avoid error and delay in arranging for treatment
Immigration Department ("Imm D")	Departmental order revised for clearer and more practical guidance to staff on advising applicants for birth certificates on standard Chinese characters
Lands Department ("Lands D")	Procedures revised for collecting unpaid rent and for monitoring processing of applications for short-term tenancies
Marine Department ("MD")	System for issuing vessel licences strengthened by stricter verification of vessel origin, recording of engine number and counter-checking for accuracy
Planning Department ("Plan D")	Guidelines on "Preview System and Handling of Incoming Correspondence" updated and consolidated to avoid misplacement or delay in handling of incoming correspondence
Rating and Valuation Department ("RVD")	Departmental Standing Technical Instruction revised for clearer determination of a current owner's duty to pay rent in arrears unpaid by previous owners
Social Welfare Department ("SWD")	Time-span defined and procedures streamlined for processing applications for disability allowance

Television and Entertainment Licensing Authority ("TELA")	Guidelines on processing applications for games centre licences revised to prevent delay and to provide accurate information for other applicants

(b) Better arrangements for inter-departmental co-ordination

Organisation	Administrative Enhancement
Architectural Services Department ("Arch SD")/ FEHD	Consensus reached between the two departments on the safe custody of electrical fixtures of unoccupied market stalls
Environment, Transport and Works Bureau ("ETWB")	Departments involved in road projects instructed to promptly vary the conditions in an environmental permit in response to changes of land use or deferment of planned development
Post Office/RVD	Both departments committed to closer liaison to ensure notifying the person affected if the Post Office should in error credit a person's payment of Government rent and rates to another account

(c) Measures for better public enquiry/complaint handling

Organisation	Administrative Enhancement
Hong Kong Examinations and Assessment Authority ("HKEAA")	Guidelines introduced to define clearly the responsibilities of staff handling complaints from teachers taking the Language Proficiency Assessment
Lands D	Departmental circular revised to ensure prompt reply to requests for information
Water Supplies Department ("WSD")	Arrangements introduced to cope with anticipated increase in telephone enquiries after a public holiday

(d) Training for staff

Organisation	Administrative Enhancement
AFCD	Workshops to train staff to handle complaints in strict confidence
Electrical and Mechanical Services Department ("EMSD")/FEHD	Enhanced training for staff of a crematorium for careful handling of ashes
FEHD	Workshops organised to enhance staff competence in taking statements and handling witnesses reluctant to attend court hearings
Housing Department ("HD")	Training for staff on answering enquiries about disclosure of personal data
Post Office	Training for staff on maintaining proper records of complaints and enquiries

(e) Measures for better services

Organisation	Administrative Enhancement
Buildings Department ("BD")	Measures adopted and targets set for clearing backlog of demolition orders not yet complied with
Correctional Services Department ("CSD")	Security measures in prisons strengthened to protect inmates from being attacked by peers
CSD	Undertaking not to interview inmates at workshops and to safeguard their privacy
Department of Health ("DH")/Hosp A	System revised, and duly publicized, for allocating time slots for patients queuing up for medical consultation at general outpatient clinics to be one slot each
FEHD	Guidelines issued for inspection of registers at cemeteries and for handling related enquiries
HD	Procedures for letting of shop premises by tender strengthened to deter abuse
Inland Revenue Department ("IRD")	All registered tax representatives under the Block Extension Scheme reminded to obtain written authorisation from clients
IRD	Monitoring of progress in processing of estate duty applications strengthened to ensure speedy handling, despite staff changes
Leisure and Cultural Services Department ("LCSD")	Instructions updated for enforcement against amphitheatre users creating noise nuisance in a park
Post Office	Procedures introduced for notifying mail addressees by SMS for prompt collection of undelivered mail items deposited at post offices

(f) Clearer information to the public

Organisation	Administrative Enhancement
AFCD	Publicity enhanced to maximise awareness of requirements for licences relating to endangered species
Education and Manpower Bureau ("EMB")	Circular issued to require schools to publicise the weighting in their admission criteria for "association with school"
FEHD	Trade representatives, training institutions and others advised on the circumstances for food handlers to be suspended from work due to sickness
Home Affairs Department ("HAD")	Public information material revised and departmental homepage updated to clarify the meaning of "convening an owners' meeting"

Imm D	Departmental webpage revised and Interactive Voice Response System updated to specify that booking arrangements for filing marriage notices do not apply in certain circumstances
LCSD	Booking status of sports facilities detailed in the departmental website for clearer understanding
Hosp A	Mechanism introduced for patients to telephone for progress of their waitlisting position so as to decide whether to continue waiting for the service
Highways Department ("HyD")	Guidance notes on publicity boards for temporary road closure revised for realistic anticipated completion date
Student Financial Assistance Agency ("SFAA")	Guidance notes for non-means tested loans applications revised to clarify requirements

4.3 Since 1995, the Administration has been submitting a Government Minute to the Legislative Council within three months after the tabling of The Ombudsman's Annual Report. This minute summarises the actions taken by the organisations concerned in implementing The Ombudsman's recommendations. It is a measure of the seriousness with which the Administration views the role and recommendations of The Ombudsman in promoting open and fair, responsive and responsible government.

Addressing Systemic Issues

4.4 In processing individual cases, we often identify "patterns" or persistent problems that call for a more comprehensive review of systems, procedures and practices. Some of the issues mentioned in my past reports have progressed but others remained matters of concern.

Seepage : Government Initiatives

4.5 I have been commenting on this perennial problem over the past four years, highlighting the need for more effective inter-departmental coordination and the importance of cooperation among private property owners. Our view remains that seepage is basically a building management matter to be resolved by owners themselves. Where it causes environmental nuisance, risks to public hygiene or building safety or wastage or contamination of potable water supply, Government has a statutory responsibility to abate the problem. In this connection, the three departments involved – Food and Environmental Hygiene ("FEHD"), Buildings ("BD") and Water Supplies – each has a specific and separate role. In public housing, the Housing Authority and the Housing Department ("HD") have delegated authority to deal with such cases on behalf of Buildings Department ("BD").

4.6 In my Annual Report last year, I noted that BD and FEHD had set up a joint office in December 2004 to deal with this problem. Government's review of its operation in mid-2005 found the pilot scheme a success, with the sources of seepage identified in about 68% of the cases, compared with only 14% previously. Government has recently decided to adopt the approach territory-wide and has allocated $80 million to the two departments for this purpose.

4.7 My Office considers this a practical approach and will continue to monitor the effectiveness of the joint office arrangements. Meanwhile, Government has earlier floated the idea of a tribunal for building management matters, including seepage issues. We see this as a viable and sensible proposal, particularly appropriate for a long-term solution. After all, remedy for seepage is part and parcel of building management and maintenance: these are properly the responsibility of property owners.

Contracting-Out of Services

4.8 With the trend for Government departments to contract out services and a marked rise in related complaints, we initiated a direct investigation into HD's supervision of property services agents on 20 January 2005. This was completed in August 2005. While we endorsed outsourcing as capable of delivering efficient, flexible and cost-effective services to public housing tenants, we concluded that ultimate responsibility for the management of the housing estates remained with the department. It should, therefore, be firmer, more positive and more proactive in monitoring the contractors' performance to ensure quality services to tenants.

Inadequate Co-ordination

4.9 Problems in co-ordination often arise when action involves the jurisdiction of different departments. This is found, typically, in complaints relating to street management, land administration and nuisance in public places. We have received complaints of street obstruction by such offending objects as cages purportedly for collecting items for recycling, shop extensions, bicycles and mobile promotional pitches. Government departments having jurisdiction for enforcement in such matters usually include FEHD, Lands D and the Police. Depending on the location and nature of the objects causing obstruction, HD, BD and other public organisations may also be involved. While all these departments have some statutory powers that they may invoke to deal with certain aspects of the problem, there is no legislation for tackling it specifically and fully. As a result, where the departments cannot or do not accord priority to addressing the problem, they may choose to interpret the law they administer narrowly. In other words, they may disclaim responsibility, or claim not to have a leading role. Consequently, no action is taken by any department and delay results while the departments debate, or dispute, who is to take action. Meanwhile, the problem remains, and both the community and Government's image suffer.

4.10 Since the case I cited last year of five Government departments not dealing with laundry being dried in public places, we have had similar complaints. These concern tardy or ineffective action against obstruction from bicycles or large mobile collection cages. To FEHD they are movable and so not really "obstructing" its cleansing operation. For Lands D, action is not suitable as movable objects are not considered as occupying Government land illegally.

4.11 In another case, action against a shop extension was put on hold while the two departments debated whether action should be taken by FEHD against the illegal structure as a hawker stall or by Lands D in the context of illegal occupation of Government land.

4.12 In yet another case, litter accumulated on top of an air duct which was part of the ventilation system of a public transport interchange located on the ground floor of a block of Government

offices. For months, the litter was not cleared as the three relevant departments – namely, FEHD, Transport Department ("TD") and Government Property Agency ("GPA") – worked out who should take up the responsibility.

4.13 I take the view that departments must take on a broader perspective: however many departments may be involved, it is still just one and the same Government to members of the public. They expect "the Government" to work out jointly a common strategy for prompt action in the public interest.

Reluctance in Enforcement

4.14 This has continued to be noticeable among some enforcement departments. We have had cases where BD, FEHD or HD would make numerous site inspections and issue repeated warning notices in response to complaints about unauthorised building works or nuisance, yet in the face of non-cooperation to abate the nuisance, stop short of taking firmer action such as statutory order or prosecution. Such reluctance prolongs the frustration and suffering of the complainants and may even breed disrespect for the authorities and contempt for the rule of law.

4.15 In a case of an unauthorised structure on a lot adjacent to a housing estate posing a security risk to the complainants, HD and Lands D refrained from any action for two years. HD did not act, on the pretext that the owner/occupier of the lot would apply or was applying to the Town Planning Board for change of land use or to Lands D for short term waiver for regularization; Lands D claimed to have included the case in its "Priority List for Lease Enforcement Action", for action possible in three to five years. Meanwhile, the two years of inaction saw long gaps during which the owner/occupier was seeking neither change of land use nor short term waiver. Frankly, the two departments had no reason to hold back and keep the case pending.

Matters of Principle

4.16 We have encountered a few cases where the organisation seemed unable to hold onto their principles. In one case, a public housing tenant claimed to be constantly disturbed by his mentally ill sister and requested allocation of separate units. Initially, HD rejected the request because he failed the means test. The tenant then lodged a complaint with our Office. On our referral of the case for inquiry, HD approved his request without obvious justification. As a result, we had to examine why HD had changed its stance on the matter. In another case, an elderly woman, who was the registered tenant of a public housing unit, requested split tenancy from her family due to problems with her relations. Surprisingly, her request was refused, resulting in her shuttling from place to place without proper residence.

4.17 Public organisations must be clear about the underlying principles of its policies and make decisions with reason and consistency. They must not waver simply because a complaint has been lodged or the complainants are persistent.

4.18 We commend public organisations that critically review their procedures and practices from time to time. We do not envisage their bending upon complaint or bowing to pressure regardless of principle or justification.

Reviewing the Jurisdiction

4.19 During the year, the review of my jurisdiction continued in the following three areas:

(a) extending Schedule 1 to The Ombudsman Ordinance to include more organisations in our ambit;

(b) reviewing Schedule 2 to the Ordinance as regards some of the prohibitions on my investigative powers in the Ordinance; and

(c) resolving the difficulties or uncertainties encountered by our officers in discharging their duties.

Human Rights Concern

4.20 Increasingly, ombudsmen worldwide are placing emphasis on human rights. Some have interpreted the scope of their brief liberally. Others have even explicitly legislated to take on the role. Hong Kong has not gone as far. Hong Kong adopts the classical ombudsman model. As such, The Ombudsman does not actively promote human rights causes. However, many services provided by Government – such as housing, education, social welfare, medical and health care, and legal aid – are human rights related. In conducting our inquiries into complaints of maladministration or direct investigations, we inevitably take account of the laws and policies pertaining to the acts under investigation. Where breach of an international treaty applicable to Hong Kong is alleged, we will ascertain whether the official actions under complaint accord with Government's obligations under the relevant covenant or convention. Thus, I do hold a watching brief and safeguard citizens' rights protected by such international instruments. Nevertheless, as part of my jurisdictional review and on the suggestion of some Members of the Legislative Council, I will consider this is a matter in which The Ombudsman could play a more active role.

Challenges

4.21 From time to time, organisations and complainants challenge our findings or decisions. This invariably generates pressure on our work and in some cases, prolongs our processing time. However, we take such occasions as reminders for us to exercise care in our inquiries, to scrutinise our procedures and to review our practices. In short, they alert us to the need to ensure that our processes are fair and reasonable.

Revived Cases

4.22 Complainants dissatisfied with our findings or my conclusions may seek a review of their cases. Special procedures apply for cases thus revived. Whilst the original investigation officer will be required to give an initial view on the complainant's grounds for review, the case then goes to another officer or the Chief Investigation Officer for the actual review. As a general rule, we will review if there is new evidence or new perspective. Replies to requests for review are always scrutinised by my Deputy and, as with all initial cases, cleared by me for issue. In this connection, we endeavour to be open-minded, responsive and responsible in our approach.

4.23 In the reporting period, we received 361 requests for review, compared to 335 last year. The decision on 13 cases was varied after review, compared to six for the last year.

4.24 Some dissatisfied complainants would criticise, or raise allegations against, individual investigation officers as biased, incomplete or incompetent in their inquiries. As all investigation reports are subject to my personal approval, such

Fig. 4.2

Revived cases

Result \ Reason	New evidence		New perspective		Outside jurisdiction	Total
	Yes	**No**	**Yes**	**No**		
Decision varied	6		7			13
Decision upheld		319			29	348
						361

comments are often really complaints against my decisions, not my officers. We treat such allegations as requests for review of the case. However, all such "staff" complaints are first considered by my Chief Executive Officer to determine whether they are genuine complaints against the conduct of my staff. If so, he will handle the complaint independently for my final consideration.

Persistent Complainants

4.25 Some complainants are very persistent in disagreeing with our findings, essentially because the conclusions do not coincide with their own views. Despite our repeated explanation, they would continue to argue for review of their cases again, and yet again, but with no new information or fresh angle. A few have even chosen to vent their discontent and objections by an influx of letters or calls to my staff at different ranks. We understand, and sincerely sympathise with, their sentiments. However, our primary duty is to establish facts and to ensure fairness to both the complainants and the organisations concerned. It is not justice, or proper use of public resources, to enter into endless debate over the same points. We do not have the capacity or resources to reply repeatedly to the same case over and over again.

4.26 In these cases, we have devised a simple card to acknowledge receipt of letters requesting further review, quoting from the past correspondence with our substantive answers to the queries raised and our conclusion as stated therein.

Fig. 4.3



Acknowledgement Card

Fig. 4.4



Extracts from Letters of Appreciation

4.27 A few complainants have chosen to bombard us with continuous calls, email massages or letters. Some even bombard my staff with abusive language. We can understand their sentiments but consider the use of abusive language quite unnecessary and unacceptable. In such case, I designate specific officers to respond on my behalf to these complainants, with all due courtesy but firm in our stance.

Judicial Review by Complainants

4.28 Apart from asking The Ombudsman to review decisions, individuals or organisations may apply to the court for judicial review. This is a significant provision since, in view of my statutory independence, my decision on a case is final.

4.29 A complainant who remained dissatisfied with my decisions after I had reviewed his case four times in just under one year, sought judicial review. At a hearing on 28 July 2004, on a single allegation of "lies" by a public officer, the High Court ordered that the proceedings be stayed for our Office to reconsider that one point as a fresh complaint. Accordingly, we conducted a full investigation into this and concluded in February 2005 that the complaint was not substantiated.

4.30 The complainant sought judicial review again on my conclusions and decision on that point. His application was rejected by the High Court and his subsequent appeal dismissed by the Court of Appeal.

Getting Information from Organisations

4.31 To ensure early completion of our inquiries, we always request organisations to furnish us with information within a timeframe. We deeply appreciate that most of them do endeavour to meet our requests.

4.32 A couple of organisations have queried our jurisdiction. I consider it perfectly legitimate for them to raise queries when they have doubts in mind and I always explain fully why we consider the matter to be within my purview. However, on one occasion I was surprised that such queries were raised at the end rather than the beginning of our inquiries.

4.33 There were also a few organisations that were not forthcoming in furnishing information to us. Relevant material had to be extracted piecemeal and only on our posing specific and pointed questions.

How We Foster Improvement and What Problems We Face

Overview

4.34 Our aim is to help improve public administration, not to carp or criticise. We are firm in our commitment to contribute to open government, quality administration and safeguard for citizen rights. Through our inquiries, we address systemic issues, rectify deficiencies, revise systems, improve procedures and recommend training. I appreciate the efforts of the departments and public organisations on my schedule taking my recommendations seriously and implementing them earnestly.

How We Run the Office

5.1 On inception in 1989, my office was staffed by seconded civil servants and we adopted Government systems and practices. In December 2001, with the enactment of The Ombudsman (Amendment) Ordinance 2001, The Ombudsman was established as a corporation sole with full powers to formulate and implement independent administrative policies and financial control, operational procedures and work practices.

Our Relations with Government

5.2 Since delinking from Government systems, I have worked out with the Administration principles and guidelines governing the administrative arrangements of my Office and our working relationship with Government. This is the "Memorandum of Administrative Arrangements" ("the Memorandum"), signed on 24 October 2005 after protracted discussions over the past few years, on arrangements for funding and for providing Government services to my Office.

Fig. 5.1



Signing of the Memorandum by The Ombudsman and the Director of Administration

5.3 It lays down the firm principle that The Ombudsman has managerial and financial autonomy in organising our administrative and support services. Apart from the Ordinance, the Memorandum documents the full independence of my Office and completion of the delinking process.

Our Staffing

5.4 We were originally staffed by officers on loan from Government. They were completely returned to the Civil Service by December 2004. Since then, we have reviewed our establishment to enhance our efficiency and cost-effectiveness. In the first half of 2005, I consolidated the secretarial support for my two Assistant Ombudsmen so that they are now served by the same secretary. The support services to all senior officers and investigation teams have also been realigned to strengthen co-operation, maximize resources and increase productivity. The new arrangements have worked well.

5.5 To ensure quality service, we endeavour to retain experienced and meritorious staff. In this connection, we provide opportunities for their long-term career development in the Office.

5.6 In June 2005, we created a new rank of Assistant Complaint Officer to provide a bridging arrangement for serving Complaint Assistants to advance to the Complaint Officer grade. Three deserving Complaint Assistants have been appointed to the new rank that month. We hope that this change in the structure of the Complaint Officer grade will instill a greater sense of belonging among our young investigators and give a firm foundation for the investigation workforce for the Office.

Complaints against the Office

5.7 This year, we processed nine complaints against our Office, five less than last year. I examine seriously every complaint for reference, ready to improve our Services. We treasure the lesson that we can learn from them.

5.8 As a result of complainant's comments and criticism, we have revised the arrangements at our reception counter. We have streamlined our filing procedures for better monitoring of the progress of our inquiries into complaints.

5.9 Complaints, therefore, provide opportunities for us to review our operation afresh. With such improvement, we develop better systems and practices to meet the community's rising expectations of our better and more efficient services.

5.10 Allegations against my staff often arise from dissatisfaction with my conclusions and decisions on cases. They do not necessarily reflect on the performance of my staff or the quality of our inquiries.

Fig 5.2

Complaints Against the Office Concluded in 2005/06

Nautre	Substantiated	Partially Substantiated	Unsubstantiated	Incapable of Determination
Staff Manner (including delay and negligence)	1		3	1
Work Procedures				1
Both Staff Manner and Work procedures		1	2	
Total	9			

Staff Training

5.11 This year, apart from equipping my staff with the basic skills for performing their duties, I have attached greater importance to specialized training for enhancing the professionalism of my senior staff . In this connection, I have nominated staff at Chief Investigation Officer level and above to attend seminars and courses as follows:

- Seminars on "Judicial Review and the Power of Statutory Discretion'" organized by the Civil Service Training & Development Institute
- Courses on "Advanced Presentation Skills" organized by the Hong Kong Management Association.

5.12 As for in-house training, we continue to organise regular open forums to discuss common problems in our work and update staff and exchange views on important issues. This year, in the fringe of the Asian Ombudsman Conference, we invited Mr Stephen Shaw, Prison & Probation Ombudsman for England and Wales, to share with us his valuable experience in

handling complaints from inmates. It was a fruitful session and gave my staff some exposure to and insight into how complaints from prisoners are handled elsewhere.

Fig. 5.3



Mr Stephen Shaw speaking at our Open Forum

5.13 Feedback from these forums offer much food for thought in re-examining our processes.

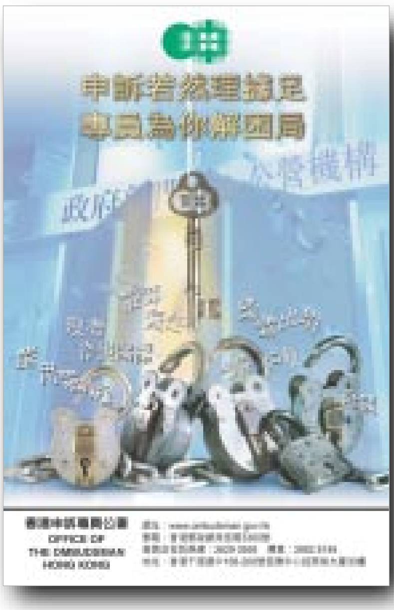


How We Promote Our Work

6.1 We sustain community interest in our services by publicity and foster public support by public education. During the year, we have maintained our momentum in enhancing public understanding of our functions and developing a positive complaint culture in the public sector. We have continued to broadcast TV and radio announcements, produce publications, hold press conferences, mount roving exhibitions, organise outreach talks, seminar, workshop and visits to this Office.

6.2 At the international level, we hosted the 9th Asian Ombudsman Association Conference at the end of November 2005. Over 90 delegates from 25 countries came, to exchange views on matters of mutual interest and common concern. Experience was shared and friendship more firmly cemented. We learned much from Ombudsmen worldwide for refinement and further development of our own system. We took the opportunity to showcase Hong Kong as a vibrant city and efficient organiser.

Fig. 6.1



Publicity Poster

Publicity and Public Relations

Public Information

6.3 Our new TV and radio Announcement of Public Interest ("API") was broadcast in September 2005. This API highlighted the need for complaints to be supported by well reasoned *prima facie* evidence before The Ombudsman would open inquiries. At the same time, to maximise publicity, we held roving exhibitions in Government office buildings with high visitor volume: Wanchai Tower, Revenue Tower, Sha Tin Government Offices and Cheung Sha Wan Government Offices. The exhibition booths were manned by our officers, to answer public enquiries and explain our functions.

Fig. 6.2



Exhibitions at Government Offices

6.4 To supplement the TV API, we printed a new leaflet on the same theme. Together with our updated fact sheet and booklet on "Tips for Making a Proper Complaint", we aim to provide simple but clear information on our role and responsibilities. These are available from our Resource Centre and the District Offices of the Home Affairs Department.

6.5 Our website **www.ombudsman.gov.hk** is renewed regularly to keep pace with our development. We post on web all our publicity materials, periodical *Ombuds News and Annual Reports* to keep the public abreast of our latest initiatives.

Media Relations

6.6 Through press conferences about once every two to three months, we publicise our investigation work. We announce individual cases, where the findings are relevant to a wide sector of our community, or direct investigations, which are generally on matters of public interest.

6.7 This year, we announced the results of three direct investigations and five cases. Summaries of the investigation reports are released through *Ombuds News*, our periodical newsletter.

Fig. 6.3



The Ombudsman in Press Conference

Fig. 6.4

Press Conferences

7 April 2005	• Declaration of direct investigation into monitoring of cases assigned out by Legal Aid Department • Announcement of findings of direct investigation into letting of market stalls by auction
22 June 2005	• Publication of 17th Annual Report • Announcement of findings from two cases - against Lands Department for delay in handling water seepage on a retaining wall - against Social Welfare Department for delay in processing an application for disability allowance
1 September 2005	• Declaration of direct investigation into assessment of children with specific learning difficulties • Announcement of findings of direct investigation into monitoring of property services agents by Housing Department
27 October 2005	• Declaration of direct investigation into mechanism for waiving medical fees administered by Hospital Authority and Social Welfare Department • Announcement of findings from two cases - against Office of the Telecommunications Authority and Buildings Department for impropriety in approving an application for installation of a mobile telephone base station

	- against Housing Department, Lands Department and Planning Department for shirking responsibility and delay in handling an unauthorised structure
19 January 2006	• Announcement of findings of direct investigation into monitoring cases assigned out by Legal Aid Department • Announcement of findings from a case concerning the imposition of a limit of stay by Immigration Department on a visitor with two entry permits in the travel document.

The Ombudsman's Awards

6.8 The Ombudsman's Awards Scheme acknowledges the exemplary efforts of public organisations and their officers in improving public administration. Awardees are commended for their professionalism and positive attitude in handling complaints and for providing quality service to their clients. In selecting awardees, we scrutinise the overall performance of organisations investigated in the past year. A key factor is their earnest endeavours to right wrongs. The effectiveness of remedial measures is another major consideration.

Fig. 6.5



The Ombudsman's Awards Presentation Ceremony

Fig. 6.6

Winning Organisations for 2005
– Buildings Department (Grand Award)
– Hong Kong Housing Society
– Inland Revenue Department

Fig. 6.7



The Ombudsman's Awards

Fig. 6.8

Individual Awards for 2005

Organisation	No. of Awardees
Correctional Services Department	1
Customs and Excise Department	1
Environmental Protection Department	1
Fire Services Department	1
Food and Environmental Hygiene Department	2
Highways Department	1
Post Office	1
Hospital Authority	1
Housing Department	1
Immigration Department	2
Inland Revenue Department	2
Lands Department	1
Mandatory Provident Fund Schemes Authority	1
Social Welfare Department	2
Transport Department	2
Water Supplies Department	1

Public Education

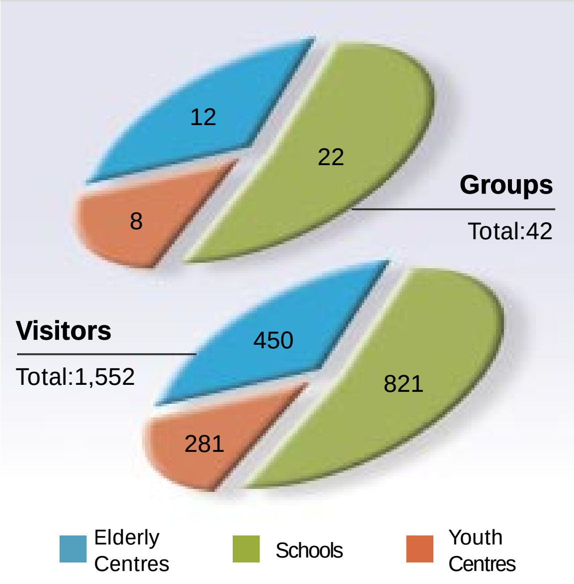
Resource Centre

6.9 Our Resource Centre houses a wealth of Ombudsman-related publications: a full collection of our *Ombuds News*, direct investigation reports, mini-DI reports (see **para. 2.24** of Chapter 2) video recordings and newsclips on our activities and periodicals of overseas Ombudsman offices. This year, we added 130 publications making our stock a total of of 2,117 items.

6.10 Members of the public are welcome to visit our Resource Centre on individual or group basis. Visitors are given a briefing by our staff and invited for expression of views. These occasions are important opportunities for civic education, not just about our Office but particularly on a positive complaint culture. In 2005/06, we had about 1,500 persons from 42 groups visiting our Office.

Fig. 6.9

Group Visits to Resource Centre



Complaint Management Workshop

6.11 Since 1996, we have been organising a Complaint Management Workshop each year for participants from public organisations on our schedule to facilitate direct communication with us. Feedback has been encouraging. This year, we departed from the one-day format for four half-day sessions in March to May 2006. Instead of inviting a mass assembly of all scheduled

organisations for one omnibus workshop on a single theme, we have gone for more in-depth discussions on issues of common concern and exchange of views with different organisations in distinct groups in accordance with the schedules of four case investigation teams. Spread over four days, we have tailored each session to suit the groups specifically. We will be assessing their impact on completion of all four sessions.

Fig. 6.10



Complaint Management Workshop

Seminars for Target Groups

6.12 We go out to university students to help our youth understand our role and functions. In October 2005, we held a seminar at The Chinese University of Hong Kong for their Department of Social work and Department of Government and Public Administration. The students participated actively and raised questions enthusiastically after my briefing. We plan to arrange similar seminars for students of other universities.

Fig. 6.11



Seminar at The Chinese University

Outreach Talks

6.13 This year, we delivered seven talks to Government departments, primary schools, universities and centres for the elderly persons. We introduced our functions, answered questions on our operations and shared experience with them. As complaint handling is an essential part of public service and every case a potential opportunity for improvement, our talks received overwhelming response.

External Relations

Meeting with Legislative Councillors

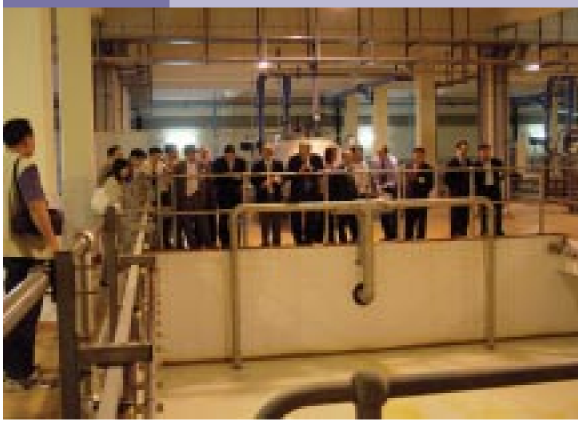
6.14 I met Members of the Legislative Council in December 2005 to update them on the initiatives of the Office. This was a useful exchange of views on the operation of the Office, including review of The Ombudsman's jurisdiction and division of responsibilities among public organisations in improving the efficiency of the public service.

6.15 Council Members were also concerned about difficulties in our meeting performance pledges. Based on their advice, we have reviewed our pledges and revised them to be more realistic, taking into account the nature and complexity of cases. The changes to the pledge will be implemented in the next financial year. For details, please see **para 3.22 - 3.23** of Chapter 3.

Support from Justices of the Peace

6.16 This Office has continued to maintain and consolidate community support by networking with community leaders. Since 1996, around 400 JPs members have been enlisted in our Justices of the Peace ("JPs") Assistance Scheme. We appreciate their support in promoting interest in the Ombudsman system. We arrange orientation visits for them to enhance their contact with public services. During the year, they have visited the Water Supplies Department (Tai Po Water Treatment Works) and the Hong Kong Housing Society (Cheerful Court). Most JPs find such visits useful in enhancing their understanding of the operations and management of public organisations.

Fig. 6.12



JPs' Visit to Tai Po Water Treatment Works

Ombudsman with Departmental Directorate

6.17 For better mutual understanding with Government departments, I started to meet their directorate, to go over general issues. On the one hand, this helps enhance my understanding of their organisational culture on complaint management. On the other hand, I can explain how I handle different complaints and why. I visited the Directorate of the Lands Department in February 2006. The exchange was meaningful. Similar sessions will be arranged with other departments.

Institutional Liaison

6.18 As the Secretary of both the International Ombudsman Institute ("IOI") and the Asian Ombudsman Association ("AOA"), I maintain close links with our counterparts the world over. This year, I attended the IOI Board of Directors Meeting in Caribbean, Antigua and Barbuda in November 2005. Later, I hosted the 9th AOA Conference.

9th AOA Conference

6.19 The 9th Asian Ombudsman Association Conference hosted by our Office from November 28 to December 1 2005 was on the theme "Evolving Ombudsman Offices". It was warmly supported by member-countries and even attracted members of the International Ombudsman Institute ("IOI").

6.20 The four-day international conference began with the Board of Directors meeting and ended with the AOA General Assembly. In between, there were six plenary sessions:

- Relationship with Government and Others Stakeholders;
- Promoting Public Awareness;
- Measuring Effectiveness of Ombudsman Offices;

- Freedom of Information and Protected Disclosure Legislation;
- Specialty and Industry Ombudsmen; and
- Handling complaints from Prisoners.

6.21 Each session was devoted to a different specialised field in public administration and complaint handling. Experts were invited to be speakers and drew most positive response.

Fig. 6.13



The 9th AOA Conference - Plenary Session

Fig. 6.14



The General Assembly of the AOA

Exchange with the Mainland

6.22 Offices of the China Supervision Institute are our counterparts in the Mainland. In July 2005, The Ombudsman led a delegation to the Mainland for a week-long study tour. We shared knowledge and experience on systems and practices in monitoring public administration with our counterparts in Beijing, Jilin and Heilongjiang.

Fig. 6.15



China Exchange Programme

6.23 From time to time, we receive groups from the Mainland. They come to us for closer, first-hand understanding of our jurisdiction and operation. Our senior officers deliver talks to them and hold discussions on our *modus operandi.* During the year, we gave talks to eight groups of 105 participants.

6.24 A list of these group visits to our Office is at **Annex 15**.

6.25 We review our promotion strategies and activities from time to time, examine feedback from the public, comments of complainants and views of participants in our activities. We also conduct surveys at regular intervals and take reference from media reports. We are constantly on the lookout for improvements to our services.

List of Scheduled Organisations

Organisations Listed in Part I of Schedule 1, Cap. 397

1. All Government departments/agencies except the Independent Commission Against Corruption, the Hong Kong Auxiliary Police Force, the Hong Kong Police Force, the Secretariat of the Independent Police Complaints Council and the Secretariat of the Public Service Commission
2. Airport Authority
3. Employees Retraining Board
4. Equal Opportunities Commission
5. Hong Kong Arts Development Council
6. Hong Kong Housing Authority
7. Hong Kong Housing Society
8. Hong Kong Monetary Authority
9. Hong Kong Sports Institute Limited
10. Hospital Authority
11. Kowloon-Canton Railway Corporation
12. Legislative Council Secretariat
13. Mandatory Provident Fund Schemes Authority
14. Privacy Commissioner for Personal Data
15. Securities and Futures Commission
16. The Hong Kong Examinations and Assessment Authority
17. Urban Renewal Authority
18. Vocational Training Council

Organisations Listed in Part II of Schedule 1, Cap. 397

1. Independent Commission Against Corruption
2. Hong Kong Auxiliary Police Force
3. Hong Kong Police Force
4. Secretariat of the Independent Police Complaints Council
5. Secretariat of the Public Service Commission

Glossary of Terms

Complaint

A complaint is a specific allegation of wrong doing, unreasonable action or defective decision which affects and aggrieves the complainant.

Complaint Not Undertaken

This is a complaint which The Ombudsman has decided not to process further after considering all its circumstances, including whether there is sufficient *prima facie* evidence of maladministration to justify an investigation and whether the organisation concerned is taking action on the matter.

Direct Investigation ("DI")

This is an investigation initiated in the public interest under section 7(1) of The Ombudsman Ordinance. DIs generally concern administrative matters of a systemic nature or significant events of wide community concern.

Direct Investigation Assessment

This refers to the preliminary examination and assessment sometimes carried out on a topic identified as a potential subject for direct investigation. This includes collection of background information, appraisal of the extent of public concern and consideration of any remedial action by the relevant authorities. It is dubbed "a mini direct investigation" when, on completion, it is found that a fuller inquiry is not necessary.

Discontinuation of Complaint

This is the cessation of inquiries into a complaint, under section 7(i) or section 11A of The Ombudsman Ordinance. This may be for the reasons set out in section 8 (read in conjunction with Schedule 2) or section 10 of the Ordinance identified after inquiries have commenced or because of such factors as insufficient information or evidence from complainants and lack of complainants' consent for access to their personal data.

Enquiry

An enquiry is a request to this Office for information or advice. It is not yet, but may develop into, a complaint.

Full Investigation

This is an investigation initiated under section 7(1) of The Ombudsman Ordinance.

Glossary of Terms

Incapable of Determination

This refers to a situation where The Ombudsman feels unable or unwilling to make a conclusive determination at the end of a full investigation. In effect, The Ombudsman is not prepared to draw any conclusion on the complaint because the evidence is conflicting, irreconcilable, incomplete or uncorroborated. This is the equivalent of an “open verdict” in court proceedings.

Internal Complaint Handling Programme (“INCH”)

This is a form of preliminary inquirie for relatively simple cases. With the consent of the complainant, we refer the case to the organisation concerned for investigation and reply direct to the complainant, with a copy to this Office. In such cases, The Ombudsman may request the organisation to address specific issues in its reply. If the reply is found wanting, then regardless of whether the complainant is satisfied, The Ombudsman may decide to continue with the inquiries and may even escalate to a full investigation.

Investigation

This refers to an investigation under section 7(1) of The Ombudsman Ordinance. It may be a full investigation into a complaint or a direct investigation without a complaint.

Maladministration

This is defined in section 2 of The Ombudsman Ordinance. Basically, it means poor, inefficient or improper administration including unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for a person.

Mediation

This is a voluntary process carried out under section 11B of The Ombudsman Ordinance where the complainant and representative of the organisation concerned meet to discuss the complaint and to explore mutually acceptable solutions. Investigators from this Office act as impartial facilitators.

Outside Jurisdiction

This refers to the situation where the action or organisation subject to complaint is not within The Ombudsman’s authority to investigate by reason of section 8 read with Schedule 2 to The Ombudsman Ordinance.

Potential Complaint

This is a complaint addressed to another organisation and copied to The Ombudsman with no request for action. It may become a complaint when The Ombudsman sees reasons to intervene.

Glossary of Terms

Preliminary Inquiries

These refer to inquiries conducted under section 11A of The Ombudsman Ordinance to determine whether a full investigation should be conducted.

Rendering Assistance / Clarification ("RAC")

This is another form of preliminary inquiries where INCH is considered inappropriate, often because the relationship between the complainant and the organisation concerned is already strained. Under RAC, this Office collects and assesses all relevant facts and then presents to the complainant the explanation, findings with our observations, and where appropriate, improvement or remedial suggestions. If further inquiry is warranted, a full investigation will be conducted. Like INCH, RAC may escalate to a full investigation.

Restrictions on Investigation

These are the restrictions on investigation set out in section 10 of The Ombudsman Ordinance.

Substantiated, Partially Substantiated and Not Substantiated

This is categorisation of the findings on completion of a full investigation. The spectrum reflect varying degrees of culpability, within the definition of "maladministration" under section 2 of The Ombudsman Ordinance. A complaint is considered to be "partially substantiated" if it consists of more than one complaint points, only some of which are found to be substantiated.

Substantiated other than Alleged

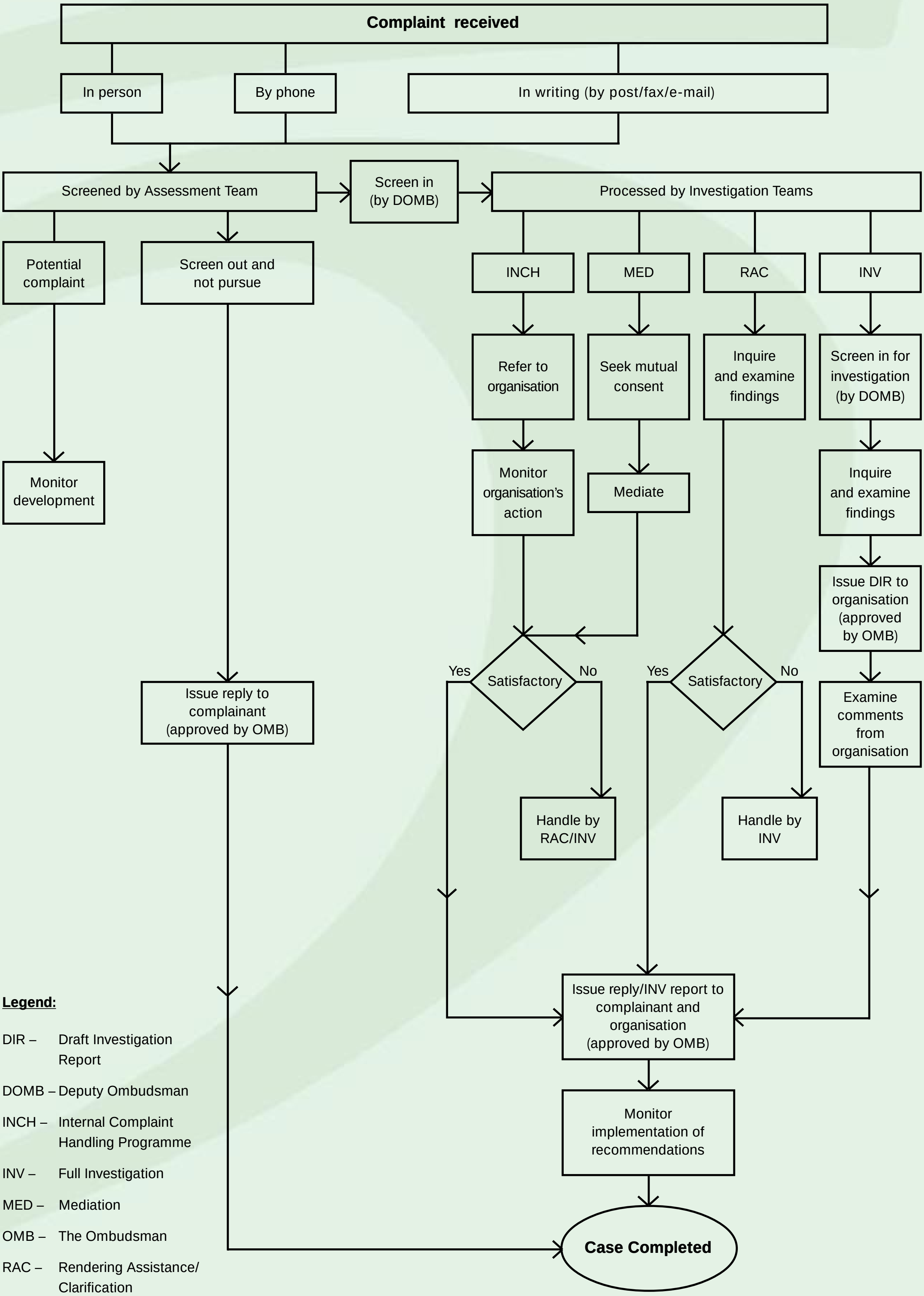
This is where a complainant's allegations are unsubstantiated but in the course of investigation, The Ombudsman discovers other aspects of significant maladministration. In such event, The Ombudsman will comment on these other deficiencies. As the complainant has not complained about these other matters, they are categorised as "substantiated other than alleged".

Withdrawal of Complaint

This is a complainant's voluntary withdrawal of a complaint already lodged with this Office. However, depending on the nature or gravity of the allegations, The Ombudsman may decide to continue the investigation despite the request to withdraw.

Annex 3

Flow Chart on Handling of a Complaint



Legend:

DIR – Draft Investigation Report

DOMB – Deputy Ombudsman

INCH – Internal Complaint Handling Programme

INV – Full Investigation

MED – Mediation

OMB – The Ombudsman

RAC – Rendering Assistance/ Clarification

Achievement of Performance Pledges

(1 April 2005 to 31 March 2006)

(A) Enquiries *

	Response Time		
By telephone or in person	Immediate	Within 30 minutes	More than 30 minutes
	14,492 (100%)	0	0
In writing	Within 5 working days	Within 6-10 working days	More than 10 working days
	207 (99.0%)	2 (1.0%)	0

* Excluding enquiries on existing complaints

(B) Complaints **

	Response Time		
Initial assessment / acknowledgement	Within 5 working days (target: 80%)	Within 6-10 working days (target: 20%)	More than 10 working days
	3,589 (99.75%)	8 (0.22%)	1 (0.03%)

** Excluding potential complaints and cases outside jurisdiction or under restriction

	Cases outside jurisdiction or under restriction			Other cases		
Cases Concluded	Within 10 working days (target: 70%)	Within 11-15 working days (target: 30%)	More than 15 working days	Less than 3 months (target: 60%)	Within 3-6 months (target: 40%)	More than 6 months
	455 (40.88%)	638 (57.32%)	20 (1.80%)	1,545 (56.00%)	1,131 (40.99%)	83 (3.01%)

(C) Group visits and talks

	Response Time	
Requests for guided group visits	Within 5 working days	More than 5 working days
	42 (100%)	0
Requests for outreach talks	Within 10 working days	More than 10 working days
	8 (100%)	0

Annex 5 Guidelines for Initiating Direct Investigations

Under section 7(1)(a)(ii) of The Ombudsman Ordinance, The Ombudsman is empowered to initiate investigations of his own volition, even though no complaint on the matter has been received.

This power enables The Ombudsman to be more proactive in the approach to problems of public interest and concern. It is particularly useful to:

(a) follow through systemic problems which investigation of a complaint alone may not resolve;

(b) nip problems in the bud by addressing deficiencies in systems and procedures; and

(c) resolve repeated complaints, once and for all, by addressing the fundamental problems which may not be the subject of complaints, but are believed or suspected to be the underlying reasons for complaint.

To facilitate consideration of matters for direct investigation, The Ombudsman has established some general guidelines:

(a) the matter concerns public administration and involve alleged or suspected maladministration as defined in The Ombudsman Ordinance;

(b) the matter should be of sufficient dimension and complexity, representing the general interest, desire or expectation of the community, or at least a sector in the community;

(c) individual grievances will normally not be a candidate for direct investigation, as there is no reason why the individual concerned cannot come lodge a complaint personally;

(d) a complaint will otherwise not be actionable under the restrictions in section 10(1) of The Ombudsman Ordinance, e.g. annoymous complainant, not the aggrieved person, but the matter is nevertheless of grave concern to The Ombudsman;

(e) the matter is normally not subject to the jurisdiction of the Court or a tribunal constituted under any Ordinance *or* it would not be reasonable to expect the affected person(s) to resort to the Court or any tribunal for remedy; and

(f) the time is opportune for a direct investigation, weighing against the consequences of not doing so.

These are no more than guidelines and are by no means exhaustive. Much will depend on the actual matter or problems.

Annex 6

List of Direct Investigations Completed

1994/95

1. Unauthorised building works

1995/96

2. Overcrowding relief in public housing
3. Accommodation for foreign domestic helpers
4. Unauthorised building works in New Territories exempted houses

1996/97

5. Provision of emergency vehicular access and fire services installations and equipment for public and private building developments
6. Problem of water main bursts
7. Co-ordination between the Social Welfare Department and the Housing Department in processing application for housing transfer on social grounds
8. Selected issues on general out-patient service in public clinics and hospitals
9. The Education Department failing to complete, on a timely basis, the processing of an application from a hearing impaired student to attend a special school

1997/98

10. Government telephone enquiry hotline services
11. Fisheries Development Loan Fund administered by the Agriculture and Fisheries Department
12. Arrangements for the closure of schools due to heavy persistent rain
13. Issue and sale of special stamps and philatelic products
14. Taxi licensing system
15. Co-ordination between the Drainage Services Department and the Environmental Protection Department over the protection of public beaches from being polluted by sewage discharges
16. Charging of management fees in Home Ownership Scheme Estates managed by the Housing Department

Annex 6

List of Direct Investigations Completed

1998/99

17. Dispensary service of the Department of Health
18. Handling of trade documents by the Trade Department
19. Recovery of public rental flats under the Home Ownership Scheme, the Private Sector Participation Scheme and the Home Purchase Loan Scheme by the Housing Department
20. Registration of tutorial schools
21. Commissioning and operation of New Airport at Chek Lap Kok
22. Restaurant licensing system
23. Issues pertaining to imported pharmaceutical products

1999/00

24. Registration and inspection of kindergartens
25. Provision and management of private medical and dental clinic services in public housing estates
26. Regulatory mechanism for the import/export, storage and transportation of used motor vehicles/ cycles and related spare parts

2000/01

27. Regulatory mechanism for local travel agents for inbound tours
28. Selected issues concerning the provision of retraining courses by the Employees Retraining Board
29. Clearance of Provisional Urban Council tenants and licence holders affected by the Land Development Corporation's development projects
30. Selected issues concerning the management of government crematoria
31. Procedures for immigration control of persons who present themselves, are found or returned to immigration check points without proof of identity

2001/02

32. Procedures for handling travellers suspected of using false or otherwise suspect travel documents
33. Management of construction projects by the Housing Authority and the Housing Department
34. Administration of public examinations
35. Mechanism for enforcing the prohibition of smoking in no smoking areas and public transport carriers

Annex 6

List of Direct Investigations Completed

2002/03

36. The Education Department's contingency and relief measures for the secondary school places allocation exercise 2001
37. Funding of sports programmes by the Hong Kong Sports Development Board
38. Administration of vehicle registration marks auctions
39. Mechanism for handling missing patients in hospitals of the Hospital Authority
40. Monitoring of charitable fund-raising activities
41. Role of the Home Affairs Department in facilitating the formation of owners' corporations

2003/04

42. Enforcement of the Education Ordinance on universal basic education
43. Operation of the Integrated Call Centre
44. Assistance provided by the Home Affairs Department to owners and owners' corporations in managing and maintaining their buildings
45. Prevention of abuse of the Comprehensive Social Security Assistance Scheme
46. Handling of examination scripts under marking

2004/05

47. 2003 Priority arrangements for surplus teachers in aided primary schools
48. Enforcement of the Building Management Ordinance
49. Enforcement action on unauthorised building works in New Territories exempted houses
50. Administration of urn grave cemeteries
51. Bloodworm incidents in public swimming pools

2005/06

52. Letting of market stalls by auction
53. Monitoring of property services agents by the Housing Department
54. Monitoring of assigned-out cases by the Legal Aid Department
55. Medical fee waiver system

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB/DI/127

Letting of Market Stalls by Auction

(Investigation commenced on 19 October 2004 and completed on 1 April 2005)

Abuse Noticed

There were 104 public markets, managed by FEHD, providing some 15,500 market stalls in early 2005.

2. Such stalls were usually let by auction. In handling complaints, we noted that the auction arrangements could be open to abuse. A tenant might outbid competitors to secure nearby stalls, then terminate the tenancy prematurely, thereby eliminating or reducing competition. As stalls vacated shortly after an auction were not auctioned again until three to five months later, the same bidder might repeat such tactics and so enjoy a *de facto* monopoly. This was unfair to other bidders and particularly to market patrons. After preliminary inquiries, The Ombudsman decided to initiate a direct investigation into the administrative arrangements of FEHD for letting public market stalls by auction.

Award of Tenancy

3. Under the Public Markets Regulation, the Director of Food and Environmental Hygiene ("DFEH") might let public market stalls at such rent and subject to such terms and conditions as he might determine.

Auction

4. Letting by auction was a long-standing practice. The successful bidder was required to take up tenancy of the stall for a term, usually three years, by signing an agreement on the spot and pay a deposit (equivalent to one month's rent) and the rent in advance for the quarter or remainder thereof. In a few markets, rents were paid monthly.

IHL Selection Exercise

5. It was Government policy to phase out itinerant hawker licence ("IHL"). To encourage holders to give up their licences, FEHD accorded priority in letting public market stalls to those willing to surrender their licences. All vacated stalls first went through a two-stage IHL selection exercise. First, FEHD would collate returns from districts on available market stalls and conduct a quarterly restricted ballot. Invitation letters were sent to all (around 800) existing IHL holders. Those interested were required to return a ballot form.

6. IHL holders entering the ballot might be interested only in the more attractive stalls. Those who failed to draw an early lot might, therefore, not choose at all. The remaining stalls would then enter the second stage of selection when FEHD would display a list of the stalls for IHL holders' selection on a first-come-first-served basis. Stalls still vacant would be openly auctioned later.

7. As arrangements for the IHL selection exercise would span over three to five months, a stall becoming vacant would, therefore, not be available for auction for that period.

Termination of Tenancy

8. A tenancy, normally for three years, could be terminated prematurely by either party. FEHD might do so if a tenant breached a tenancy condition or committed an offence. Tenants thus terminated would be banned from bidding for stalls for one year.

9. FEHD exercised its power of terminating tenancies with care. A serious breach (such as selling meat from unauthorised source) would lead to immediate termination. Otherwise, only breach repeated over time would result in premature termination.

10. A tenant might terminate the tenancy prematurely by giving one month's written notice. No reason was required and there was no minimum period within which the tenancy could not be terminated without penalty. In such case, the tenant could pay rent for one month, leave upon expiry of notice with refund of the deposit and any unexpended rent. The stall would then be left vacant for months.

11. Failure to give notice to quit would result in forfeiture of the deposit. However, the tenant might still be refunded the unexpended rent. Again, this would cost him a sum equivalent to only one month's rent.

12. All stalls vacated would become available for the next two-stage IHL selection and auction, after some three to five months. In other words, the current system for termination of tenancy allowed an existing tenant to "excise" a nearby stall from competition for up to six months at the cost of only one month's rent.

Case Studies

13. We examined cases for irregularities, where tenancies were terminated shortly after commencement. We found that since 2001, there had been 213 cases of tenancy being terminated within 12 weeks. We studied some suspect cases which involved three bidders.

Observations and Opinions

14. We saw auctioning as a fair and open means for opening up business opportunities in public markets and for maximising public revenue. Regrettably, the FEHD procedures had loopholes for unethical parties to advance their self interests.

Award of Tenancy

15. We accepted the policy for priority to IHL holders but considered the time for processing a vacated stall for auction to be far too long.

16. By natural attrition, the number of IHL holders decreased with time. Eventually, there would be few remaining IHL holders who might not be interested in trading in their licences for stalls. FEHD should, therefore, review the return rate of ballot forms and consider revising the policy by, say, putting the onus on IHL holders to indicate interest in trading in their licences.

Termination of Tenancy

17. A tenancy bound FEHD for three years unless the tenant was found to have breached tenancy conditions or committed an offence. However, it was easy for the tenant to quit prematurely without reason and there was no penalty to deter wilful termination. This was not a fair balance of all the interests concerned: prospective bidders, market patrons and FEHD or Government. Furthermore, it bred abuse.

18. FEHD should, therefore, set a minimum period in the tenancy agreement for market stalls during which termination would attract a penalty payment. This should deter *mala fide* bidding. FEHD should focus on cases of early termination, whether within or after the minimum period and keep records for reference.

Notice of Termination

19. FEHD should consider requiring a larger deposit or longer notice for premature termination. This would increase the cost of early termination and deter abuse. To shorten the period of vacancy, FEHD should also activate the relevant procedures as soon as notice was received.

Ban on Bidders

20. In future auctions, FEHD should impose restrictions on tenants who terminated their tenancies early, as for those who had breached tenancy conditions or committed an offence.

Recommendations

21. The cases examined showed that abuse in auctioning for market stalls should have become evident much earlier. We were surprised that other than a single attempt to tackle a case of blatant abuse, FEHD had not formulated any strategy to plug loopholes in the procedures or to tighten control over the system. Unethical bidders had thus taken unfair advantage of the FEHD rules. It was imperative that FEHD review the arrangements for auctioning stalls.

22. The Ombudsman made the following recommendations to DFEH:

Award of Tenancy

(a) In anticipation of the natural attrition of remaining IHL holders, review the return rate of ballot forms.

(b) Consider when it would be appropriate to revise the policy for priority to IHL holders in the selection of vacant market stalls.

(c) Cut considerably the lead time for preparing for auctions of vacant stalls.

Termination of Tenancy

Minimum Period

(d) Review the terms of the tenancy agreement to set a minimum period, within which tenancies could be terminated only on a penalty payment.

(e) Inform bidders of such minimum period and penalty payment for early termination.

(f) To allow flexibility, review from time to time the need to provide for genuine exceptional circumstances under which a tenancy might be terminated prematurely without penalty payment.

(g) Keep proper records on tenants who had applied for premature termination.

(h) Review the period for longer notice of termination.

(i) Review the deposit for a larger amount.

Ban on Bidders

(j) Establish mechanism to impose restrictions in future auctions on tenants who had previously applied for premature termination.

(k) Consider sanctions on bidders found to have abused the system in our case studies.

23. FEHD accepted our recommendations and promptly started implementing some of them.

HOSPITAL AUTHORITY ("HA") AND SOCIAL WELFARE DEPARTMENT ("SWD")

Case No. OMB/DI/141

Medical Fee Waiver System

(Investigation commenced on 27 October 2005 and completed on 31 March 2006)

Purpose of System

It is Government policy that no one should be denied medical care because of lack of means. To assist low-income and vulnerable groups, Government has long had a waiver system administered by HA and SWD. The Ombudsman initiated this direct investigation as a result of a complaint alleging abuse of the system.

Eligibility

2. Recipients of Comprehensive Social Security Assistance ("CSSA") are automatically eligible and need not apply. Other vulnerable groups not receiving CSSA, namely those on low income, chronically ill with limited means and elderly persons with limited means, may apply to Medical Social Workers ("MSWs"). In some cases, waiver may be granted on "non-financial grounds"; but the criteria were not clearly specified.

Processing of Applications

3. The onus for disclosing true and full facts rests on the applicants. They are warned against providing knowingly false information concerning their financial status, but the operational guidelines do not require MSWs to go beyond the information and documents supplied by the applicant.

4. In 2004/05, some 1.1 million persons were granted waiver at a cost of over $500 million. Of these, about 183,000 were non-CSSA recipients, with over $100 million waived. Some 6.8% of those cases or just over $6.8 million in waiver were granted on non-financial grounds. An HA survey in 2003/04 revealed that only an insignificant proportion of applications had been refused:

Period	Amount of Medical Fees		No. of Cases	
	Collected	Waived	Waived	Refused
11.2002 – 31.3.2003	$831 M	$346 M ($76 M*)	498,873 (68,911*)	Figures not available
1.4.2003 – 31.3.2004	$1,176 M	$517 M ($123 M*)	933,809 (150,122*)	1,113#
1.4.2004 – 31.3.2005	$1,305 M	$527 M ($101 M*)	1,108,069 (183,089*)	Figures not available

Source: HA
* *Figures for non-CSSA cases*
\# *One-off survey conducted by HA in 2003/04. Figures from June 2005 are now available with the introduction of the e-waiver. 126 applications were refused in the second half of 2005.*

No Abuse Detected

5. HA and SWD claimed not to have detected any case of abuse ever. However, the information we had examined did illustrate deficiencies in the system. The mentality of some in the HA and SWD management also caused concern.

Our Observations and Opinions

6. We commend Government for its commitment to provide for the truly needy and vulnerable. In this context, the waiver system should benefit only those genuinely in need. As custodians of public funds, HA and SWD must guard against misuse or abuse. The case MSW is the first, and often even the only, line of defence in the system to scrutinise an application. However, in a case that we studied, an officer vetting an application properly and pointing out an earlier error was not only not appreciated by the supervisors, but actually "gagged" with threat of discipline.

7. No abuse case detected, lack of statistics on cases refused and the almost 100% approval of waiver suggest the possibility of insufficient focus on genuine need for waiver or inadequate care in scrutiny of applications. The vague criteria for waiver on non-financial grounds may also lead to inconsistencies among MSWs in their decisions. HA and SWD advised that MSWs were inclined to grant waivers to psychiatric patients, regardless of their income or even in the absence of a signed application, in order to motivate them to receive medical treatment. However, this "long-standing practice" was not provided for in the operational guidelines.

8. We accept the need for an honour system in view of the volume of cases. However, this should be supported by post-approval random check and action for deterrent. HA and SWD's complacent attitude to the current system is surprising and worrying.

9. Waiver is valid for a period. MSWs need to consider only one-off waiver to patients whose financial situations are likely to change and extend the validity of the waiver to other patients, e.g. senior citizens requiring long-term medical care, to ease their plight and reduce MSWs' workload.

Recommendations

10. The Ombudsman made the following recommendations:

Adherence to Waiver Objective

(a) To change the seemingly established mindset of MSWs and warn them against casual approval.

(b) To review the non-financial criteria for approval to make them clearer and more specific and in line with Government policy.

(c) To document properly factors considered and basis of decision when waiving fees of psychiatric patients.

(d) To devise a counter-checking mechanism by, say, internal audit teams, to vet approval of full waivers granted to patients whose income is above 50% of Median Monthly Domestic Household Income.

(e) To encourage, not deter, MSWs to report cases of suspected abuse.

Prevention of Abuse

(f) To require MSWs to examine carefully information supplied by applicants and, in case of doubt, contact family members, banks or employers in accordance with the Guidelines.

(g) For suspect but indeterminable cases, to require MSWs to grant waiver first and then, involving Headquarters where appropriate, conduct post-approval investigation.

(h) To select a percentage of cases at random for post-approval checks.

(i) To publicise arrangements for random checks to deter abuse.

(j) To remind officers of the importance of alerting applicants to the legal consequences of providing knowingly false, inaccurate or incomplete information.

(k) To take firm action against defrauders and publicise such cases.

Validity Period of Waiver

(l) To review the validity period of certificates granted to different patient groups.

Psychiatric Patients

(m) To review the guidelines to reflect the long-standing practice of giving psychiatric patients special treatment.

11. HA and SWD had generally accepted our recommendations. Implementation of some measures was already underway.

HOUSING DEPARTMENT ("HD")

Case No: OMB/DI/118

Monitoring of Property Services Agents

(Investigation commenced on 20 January 2005 and completed on 30 August 2005)

Background

As the Housing Authority's executive arm, HD is responsible for managing its public rental housing ("PRH") estates. Since 1996, management of some PRH estates has been outsourced. As at August 2005, there were 153 PRH estates with about 590,000 domestic units. Management of 84 of them with some 290,000 units has been outsourced to property services agents ("PSAs").

2. Many complaints against HD related to the management of PRH estates. Concerned that HD monitoring of the agents' performance be effective and efficient in ensuring proper tenant services, The Ombudsman initiated a direct investigation.

Support for PSAs

3. HD provided support to PSAs mainly through handing-over meetings and Best Practice Notes ("BPN"). However, it expected PSAs to be conversant with all HD internal circulars, instructions as well as BPN in their day-to-day work.

PSAs' Expected Role

4. PSAs were required to operate independently by setting up their own offices in PRH estates. They were expected to deal with all estate management-related complaints in accordance with HD internal instructions. They were to attend to minor repair or maintenance independently, without HD's prior approval. Where the service contract also covered major repair and planned maintenance, a PSA was required to be project manager and to supervise HD works contractors.

5. Although HD retained its statutory authority, it expected PSAs to assist in the exercise of such authority.

Monitoring of PSAs

6. HD monitored the performance of PSAs mainly through an assessment scheme comprising three components:

Component		Weighting
(a)	HD assessment (monthly)	50%
(b)	Estate Management Advisory Committee ("EMAC") assessment (bimonthly)	20%
(c)	Tenant assessment (quarterly)	30%
	Overall assessment	100%

7. HD had a PSA Administration Unit in each of its five geographical regions. Every Unit had four to five PSA monitoring teams, each overseeing six to eight estates managed by two to three PSAs. The monitoring teams carried out scheduled monthly inspections in each estate. They also conducted surprise inspections at least once a month, but on specific aspects only. As a moderation mechanism, the head of each Unit reviewed the monthly assessments of his teams to ensure consistency in standards.

Observations and Opinions

8. Our investigation focused on whether, in outsourcing the management of PRH estates, HD recognised that it retained ultimate accountability for the provision of quality services to PRH tenants.

Support from HD

9. HD kept its distance in managing and monitoring PSA performance, giving PSAs only an induction briefing and some written instructions without active support. However, PSAs had to execute PRH policies, a function quite different from private estate management. Essentially, PSAs had to learn on the job to adjust to public sector practices.

10. Meanwhile, as HD retained its statutory authority, PSAs had no legal backing for such operations as clearance of illegal hawkers and eviction of tenants. Nor was active support from HD always available when difficulties arose.

Supervision of Maintenance Works

11. HD staff acknowledged that many PSAs lacked the necessary experience and expertise to deal with HD works contractors and to handle works orders in accordance with HD procedures.

Monthly Inspection

12. HD assessment of PSA performance through scheduled monthly inspections placed undue emphasis on form over matter and did not involve contact with tenants. Prior announcement of inspections also impaired their effectiveness for monitoring. Surprise inspections would reflect the actual field situation more accurately than pre-arranged visits and should be conducted more frequently for detection of irregularities.

EMAC Assessment

13. We noted some anomalies among EMACs:

(a) EMAC weighting in the total assessment score was the same regardless of size or representativeness of an EMAC;

(b) EMAC scores could be quite extreme; and

(c) EMAC assessment was based largely on members' personal impressions.

Tenant Assessment

14. The quarterly tenant surveys aimed at an overall assessment of satisfaction with each PSA by tenants across all estates in its portfolio. The sample size was limited to only 150 households per PSA, irrespective of the number or population size of the estates managed by the PSA.

Overall Scores

15. There was only a marginal difference between the scores of PSAs in the top and the bottom quartiles. Nevertheless, such scores formed the basis of HD's consideration for subsequent engagement of the PSAs.

HD Performance in Monitoring

16. HD completely withdrew its staff from an estate once a PSA had taken over the management. Consequently, tenants might not be aware that HD still retained ultimate control and responsibility over estate management matters. When confronted with tenant complaints, some HD staff conveniently shielded themselves behind the property services contracts and passed the blame to the PSA concerned.

17. Some HD staff did not see it their role to train or guide PSAs.

Dealing with Unsatisfactory Performance

18. In theory, PSAs with more than three consecutive "adverse" reports were liable to contract termination. Yet, that had never happened. HD just issued repeated warnings or debarred the offending PSA from tendering for new contracts.

Conclusions and Recommendations

19. We endorsed outsourcing as capable of delivering efficient, flexible and cost-effective tenant services in PRH estates. We also accepted that it would not be realistic or reasonable for HD to supervise every detail of PSA operations or to deal with all tenant requests or complaints directly. However, given HD's ultimate responsibility for the management of PRH estates, HD should be firmer, more positive and more proactive in monitoring PSA performance to ensure quality services to tenants. HD should give PSAs proper guidance and active support where appropriate (e.g. in enforcement matters).

20. In this context, The Ombudsman made the following recommendations to HD:

Principle of Accountability

(a) To impress upon staff, through written instructions, briefings and training, that HD continued to discharge statutory functions not delegated to PSAs and remained ultimately responsible for overall PRH management.

(b) To enhance publicity for proper awareness and understanding of HD's role in monitoring PSAs and responsibility in PRH management.

Support to Both HD and PSA Staff

(c) To formulate guidelines and procedures for HD staff on the extent and timing of intervention or support to PSAs.

(d) To update HD instructions and BPN regularly to ensure that they were comprehensible and comprehensive, meeting current needs.

(e) To organise regular briefings and seminars for HD staff and PSAs to enhance their understanding of HD instructions, guidelines and procedures.

Supervision of Maintenance Works

(f) To review and streamline its works procedures to facilitate PSA operations.

(g) To evaluate more carefully, in the selection of PSAs, their aptitude for PRH maintenance works.

(h) To organise training for PSAs on HD works procedures.

(i) To consider ways to facilitate PSAs' effective control over HD works contractors.

(j) To exercise re-entry when necessary.

Assessment and Remedies

(k) To conduct surprise inspections more frequently to cover all aspects and to include their findings and scores as a separate and important component of the overall assessment.

(l) To review the Department's moderation mechanism to ensure consistency of assessment standards in general.

(m) To organise regular forums for monitoring teams to share experience and to promote common understanding.

(n) To analyse carefully the number and nature of complaints received in assessing tenants' satisfaction level and PSA performance.

(o) To review critically –
   (i) the weighting of EMAC assessment and ways for counter-checking and moderating members' extreme scores; and
   (ii) the methodology for the tenant surveys to cover tenants' satisfaction level for each PSA and in each estate.

(p) To devise effective measures to deal with non-performing PSAs and to carry out such measures decisively whenever necessary.

Final Remarks

21. HD generally accepted our recommendations.

LEGAL AID DEPARTMENT ("LAD")

Case No. OMB/DI/135

Monitoring of Assigned-out Cases

(Investigation commenced on 18 March 2005 and completed on 17 January 2006)

Legal Aid Schemes

Access to the courts and the right to confidential legal advice are enshrined in Article 35 of the Basic Law. Set up in 1970, LAD administers publicly funded legal aid schemes for those who satisfy the means test and the merits test but cannot afford the costs of litigation.

2. Legal aid cases are dealt with by in-house counsel or assigned to lawyers in private practice ("assigned lawyers"). Our investigation focused on how LAD monitored civil cases assigned out, to ensure efficient service to aided persons and cost-effective use of the Legal Aid Fund.

3. In 2004/05, about 5,300 (comprising two-thirds of) civil cases were assigned out, incurring expenditure of $285 million.

Operation and Monitoring

4. ***Director's First Charge***. Being granted legal aid did not mean that services would necessarily be free. If the aided person succeeded in recovering damages or preserving property in the proceedings, the Director of Legal Aid ("DLA") would have a right to recover from the aided person all the expenses and costs incurred in the case that could not be fully recovered from the other party. This was DLA's right to first charge, stipulated in all legal aid certificates.

5. ***Assigning Out of Cases***. LAD formulated guidelines and procedures on the assignment and monitoring of legal aid cases in its Operation Manual. About two-thirds of its civil cases[1] are assigned out.

6. ***Choice of Lawyers***. If the aided person nominated a lawyer, LAD would not reject that preference unless for compelling reasons. If the aided person had no preference, LAD would assign a lawyer from the Legal Aid Panels, which comprised about 2,000 solicitors and 700 barristers. However, aided persons could not discharge the assigned lawyer without DLA's permission as to whether re-assignment was reasonable.

7. ***Duty to Monitor***. LAD defined its duty for monitoring assigned lawyers by reference to a decision of the Court of Appeal in 1981[2] that DLA was under no duty to invigilate the performance of the assigned lawyer and regulation 12 of the Legal Aid Regulations[3].

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1 Of 28,953 civil cases from 2002/03 to 2004/05, 19,797 cases were assigned out.

2 *Ngao To-ki v Attorney General* [1981] HKLR 259-297

3 Regulation 12 provides that the conduct of proceedings by the assigned lawyer is, under certain circumstances, subject to DLA's scrutiny.

8. ***Bring-up Mechanism***. LAD officers were to bring up all case files for review at least every three months. If requests for progress reports from assigned lawyers were ignored or not adequately responded to, LAD officers would remind them. If the assigned lawyer failed to respond despite repeated reminders, the case would be reported to the Departmental Monitoring Committee ("DMC") of LAD. In the past three years, LAD had assigned out some 26,000 cases; DMC had considered 28 unsatisfactory evaluation reports.

9. ***Evaluation of Assigned Lawyers***. LAD officers were required to complete an evaluation report on the performance of assigned lawyers for their first assignment; when their performance was considered unsatisfactory; or if they were on LAD's records of unsatisfactory past performance. Evaluation reports would be considered by DMC.

10. ***Legal Aid Services Council ("LASC")***. In 1996, Government established LASC to supervise legal aid services and to advise the Chief Executive on legal aid policy. In October 1998, LASC set up a working party to follow up improvement measures recommended by an inter-departmental working group set up by Government to study LAD's monitoring system. In January 2003, its Interest Group on Assignment System and Monitoring of Assigned-out Cases recommended that LAD should draw up checklists for use by assigned lawyers to standardise the procedures for progress reports. This Group even produced a sample checklist for LAD's consideration.

Our Observations and Opinions

11. From the investigation, this Office had the following observations:

(a) There was a tripartite relationship among LAD, the aided person and the assigned lawyer. As a Government department, LAD had administrative accountability for service to aided persons as well as the efficient and cost-effective operation of the legal aid schemes.

(b) A Government department might contract out their services, but not the accountability for the quality, efficiency and effectiveness of such services.

(c) Many aided persons did not know or could not understand the first charge and its implications.

(d) Case studies showed that LAD guidelines, though well formulated in theory and on paper, were not always followed in practice. LAD's guidelines and actions had failed to protect the aided persons' interests or the public purse. DMC also seemed ineffective as a deterrent to incompetent or ineffectual assigned lawyers.

(e) It was good practice to ensure that all cases receive timely attention. However, after reviewing case files, individual officers had a great deal of latitude in deciding whether or not to call for progress reports. In one case, the assigned lawyer simply ignored all 15 reminders and letters over almost three years. Far more positive and firmer action by LAD should be in order.

(f) Commendably, LAD had an evaluation proforma for assessing unsatisfactory performance of assigned lawyers. However, the description of and criteria for unsatisfactory performance were too vague. Defined trigger points would help to identify possible problems and ensure a clearer and more consistent approach in evaluation.

(g) Unsatisfactory evaluation reports were few and far between. There should be more stringent standards in such evaluation. The current “negative” evaluation should be supplemented by some effective yet simple appraisal systems under the DMC for an overall grading of individual assigned lawyers on conclusion of a case.

(h) In one case where the assigned lawyer first hinted his cash flow problem in April 2003, LAD chose to be sympathetic and did not act. In the event, the assigned lawyer absconded in January 2005. It was both an unfair blow to the aided person, who was then unable to recover anything, and a sheer waste of public funds.

(i) In case of professional misconduct, LAD might report to the two legal professional bodies. However, only one report had been made in the past three years. We considered the current guidelines too vague and LAD practice too lax.

(j) LAD should be ready to take firm action to enforce Court judgements. In particular, it should institute legal proceedings after due warning has been given. Otherwise, not only would the aided person not get his due, the credibility of Government and indeed the judicial system could be at stake.

k) Despite earnest supervision for almost a decade, efforts by LASC seemed to have made little impact on LAD's monitoring of assigned lawyers.

Recommendations

12. A fundamental change was needed in LAD's concept of and approach to monitoring of legal aid cases. The Ombudsman made the following recommendations to DLA:

First Charge

(a) To explain clearly in simple layman terms to legal aid applicants the operation and implications of the first charge and then, direct or via assigned lawyers, from time to time of the implications.

Monitoring

(b) To review and re-orientate the mentality in monitoring the performance of assigned lawyers.

(c) To consider a more formal “contractual” arrangement to facilitate LAD's effective monitoring of assigned lawyers' performance in discharging their duties.

Progress Reports

(d) To remind staff not just to make timely issue of requests and reminders for progress reports but also to set reasonable limits for such reminders with a view to escalating supervisory action.

(e) To develop more effective means to ensure assigned lawyers' timely delivery of progress reports and early conclusion of cases.

(f) To revise procedures to ensure timely completion of post-judgement action.

(g) To review procedures to make for effective and flexible sanction against unresponsive and irresponsible lawyers instead of making empty threats of referral to DMC.

Evaluation and Appraisal of Assigned Lawyers

(h) To identify trigger points for evaluation of unsatisfactory performance of an assigned lawyer.

(i) To supplement this by an effective and efficient yet simple appraisal system under the supervision of DMC (e.g. award of an overall grade to assigned lawyers upon conclusion of cases).

Intervention by LAD

(j) To review guidelines to specify the circumstances under which officers should intervene or re-assign cases.

(k) To review guidelines to specify the circumstances under which officers should refer cases to the two professional bodies for further investigation.

Enforcement of Judgements

(l) To strengthen the current arrangements to enforce judgements and to institute legal proceedings for contempt after warning has been given.

Checklist

(m) To re-consider the checklist arrangements proposed by the Interest Group of LASC.

Administration of Legal Aid Services

(n) To consider ways to enhance the effectiveness of LASC with effective monitoring.

Comments from LAD

13. LAD pointed out that a balance must be struck between the need to monitor assigned-out cases and to sanction under-performance, and the need to entrust the assigned lawyers with the responsibility and latitude to conduct the cases according to their professional judgement.

Comments from LASC

14. LASC appreciated our concern over effective monitoring of assigned-out cases and would continue to make efforts to improve governance.

Final Remarks from The Ombudsman

15. The Ombudsman recognised the need of LAD to strike a balance. However, the question was where and when to draw the line. For a monitoring system to be efficient and effective, there must be some points in the conduct of the assigned lawyer to trigger possible intervention and perhaps even sanction.

EQUAL OPPORTUNITIES COMMISSION ("EOC")

Case No. OMB/DI/129

Mechanism for Handling Conflict of Interests

(Assessment commenced on 7 September 2004 and completed on 5 July 2005)

Background

A complaint against EOC for impropriety in processing a case for legal assistance had raised The Ombudsman's concern about the apparent inadequacy of EOC's mechanism for handling conflict of interests.

Disclosure of Interests

2. Under the Sex Discrimination Ordinance, EOC members or committees have a statutory duty to disclose the nature of their interests in a contract made or proposed to be made by EOC, its committee, employee or agent. They must also adhere to the ICAC guidelines for reporting interests. EOC staff were required to comply with a code of conduct to avoid conflict of interests.

3. According to the ICAC guidelines, if a member declared interests at a meeting, the EOC Chairperson (or the committee) had to decide whether he should stay, speak or vote on the matter concerned. However, the Chairperson did not have the power to enforce such decision; compliance depended on the voluntary cooperation of the member.

4. EOC did not keep a central record of members' declaration of interests. A declaration might be recorded in the minutes of meeting or in the case file, or not recorded at all.

Processing of Legal Assistance Applications

5. The Legal and Complaints Committee ("LCC") of EOC was responsible for assessing applications for legal assistance. Its members had to read committee papers to ascertain if there was conflict of interests to be declared. Such members could return the papers to EOC or destroy the papers themselves.

6. In the case under complaint, an LCC member ("Mr A") had declared interests in a legal assistance application and withdrawn from a meeting concerned. However, he attended a subsequent meeting during which members were updated on the development of all legal assistance cases (including the complainant's). EOC explained that as there was no decision to be made, there should be no conflict of interests arising from Mr A's presence at the meeting.

Our Observations and Opinions

7. We saw a need for EOC to devise rules to provide for situations where a member declaring conflict of interests refused to leave the meeting.

8. In legal assistance cases, it would be prudent for EOC to impose clearer and more stringent standards to avoid any conflict of interests. Mr A should have withdrawn from any subsequent meeting where the complainant's case was raised. The Ombudsman considered that to accord with open and accountable administration.

9. Proper records of declaration of interests and follow-up action should be kept. If a member withdrew from a meeting for conflict of interests, it should be noted in the minutes of the meeting.

Conclusion and Suggestions

10. As EOC had both statutory and administrative rules on conflict of interests, The Ombudsman considered a direct investigation not warranted.

11. Nevertheless, The Ombudsman recommended that EOC:

(a) draw up proper guidelines to enable the Chairperson (or convenor of a committee) to exercise administrative authority in handling members' declaration of interests;

(b) formulate guidelines to handle conflict of interests and in legal assistance cases, retrieval of papers for destruction from the members having declared interests; and

(c) keep proper records of any declaration of interests and follow-up action taken.

12. EOC had no comment on this report.

LABOUR DEPARTMENT ("LD")

Case No. OMB/DI/128

Prevention of Abuse of Protection of Wages on Insolvency Fund

(Assessment commenced on 18 August 2004 and completed on 30 March 2006)

Background

A number of restaurants had gone out of business without paying their employees wages. This gave rise to considerable public concern over possible abuse of the Protection of Wages on Insolvency Fund. The Ombudsman, therefore, initiated this direct investigation assessment.

The Fund

2. The Fund aims to provide timely relief by *ex gratia* payment to employees of insolvent employers. It was mainly financed by a levy on Business Registration Certificates. The maximum amount payable to an employee was $278,500.

Problems in the Catering Industry

3. The catering industry accounted for a high percentage of applications for payments from the Fund. It, therefore, became the focus of attention.

Measures against Abuse

4. Over the years, LD had put in place a number of measures against abuse: vetting applications; setting up a special investigation team in May 2003 to pursue suspected cases; stepping up prosecution against default employers since 2004 and launching publicity campaigns to remind employers of their obligations and encourage employees to report non-payment cases.

Recent Developments

5. There had been a decline in restaurant insolvency and applications to the Fund from the catering industry by the end of 2005. The Fund recorded a surplus of $96.3 million at the end of 2004/05. This was encouraging but a long-term solution against abuse had to be worked out. Apart from remedial measures, LD saw the long-term solution in legislation.

Our Observations and Opinions

6. In the circumstances, The Ombudsman decided not to initiate a direct investigation but would keep in view developments.

LANDS DEPARTMENT ("Lands D")

Case No. OMB/DI/142

Collection of Government Rent

(Assessment commenced on 17 March 2005 and completed on 23 September 2005)

Background

Property owners are required to pay Government rent. In view of complaints against Lands D for requiring current owners to pay Government rent owed by previous owners, The Ombudsman conducted this direct investigation assessment.

Government Rent

2. Leases for land in the urban area varied in terms, some for 999 years ("long-term lease") and others for 75 years renewable for a further term. In 1973, a large number of the renewable leases were due to expire on 1 July. The Government Leases Ordinance (Cap. 40 of the Laws of Hong Kong) was enacted to renew those leases at a Government rent of 3% of the rateable value of the property upon renewal ("Cap. 40 rent").

3. In the New Territories, an indigenous villager with a rural holding or a small house lot was required to pay the rent stipulated in the original lease ("old rent").

Problem

4. Lands D had been responsible for collecting old rent. Until 1 April 2002, both Cap. 40 rent and rent under long-term lease had been billed by the Treasury. For better efficiency, Lands D took over from that date.

5. For properties with Government rent of $100 or less a year, Lands D issued demand notes only once every five years. This resulted in many owners being billed for rents accrued before their acquisition of the properties.

Measures by Lands D

6. To remind prospective property buyers of their liability for Government rent, Lands D posted explanatory notes on its website and placed a hyperlink to those of the Land Registry and the Rating and Valuation Department. Its flyers went out with bills issued by the Water Supplies Department in 2004. It had also set up a hotline for enquiries. Besides, it issued letters to the Law Society and the Estate Agents Authority to remind practitioners of their obligation to check for arrears of Government rent before property transactions.

Observations

7. We considered Lands D's collection of Government rent every five years reasonable, to minimise administrative costs. The Department's measures for alerting prospective property owners to their liability for Government rent were also adequate.

8. A purchaser should, in his own interest, ascertain any outstanding Government rent before buying a property. He might do so through an estate agent, a lawyer, the vendor or Lands D.

9. Against this background, The Ombudsman considered a full direct investigation not warranted.

LEISURE AND CULTURAL SERVICES DEPARTMENT ("LCSD")

Case No. OMB/DI/116

Planning of Public Swimming Pools

(Assessment commenced on 5 November 2003 and completed on 3 March 2006)

Background

In recent years, private residential developments often offer leisure amenities, especially swimming pools. The Ombudsman was thus concerned over the planning for and possible over-provision of public swimming pools by LCSD.

Planning and Provision of Public Pools

2. As at 31 December 2005, there were 36 public swimming pool complexes across the territory. The recurrent operating expenditure ranged from $3 million to $29 million in 2004/05, with public subsidy well over 80%.

3. LCSD examined requests for new swimming pools on the basis of such factors as existing facilities in the locality, their rates of utilisation, trends in aquatic sports, population structure and forecast of changes. It also made reference to the Hong Kong Planning Standards and Guidelines ("the Guidelines") prepared by the Planning Department ("Plan D"). The Guidelines provided for one standard complex for every 287,000 persons and one leisure pool in each of the territory's 18 districts. Private sector contribution to recreation facilities would also be taken into account.

4. As regards trends in aquatic activities, LCSD found that there had been an increase of swimmers in the winter months. This meant increased demand for indoor heated pools.

Private Sector Provision

5. LCSD surveyed the provision of leisure and recreation facilities in 2004. Of the 1,042 private developments responding to the survey, 715 had such facilities, i.e. a total of 874 swimming pools. Findings indicated that swimming pools were a common feature in larger private residential estates. LCSD had since been reviewing the standards for providing public swimming pools and had discussed with Plan D how private facilities should be counted towards such standards under the Guidelines.

Our Observations and Comments

6. There was no formal documentation on how a particular trend in aquatic sports was identified, analysed or accepted for planning purposes or how a particular type of pool facilities was decided on.

7. Utilisation rates fluctuated with time and locality, while attendance had declined obviously for some pools in the past few years. Besides, utilisation of diving pools and paddling pools was low irrespective of location. There was a need to improve and maximise utilisation of the less popular pools.

8. Plan D's Guidelines should include an overall review of provision of leisure and cultural facilities other than swimming pools. A timeframe for such review should be set.

Conclusion and Recommendations

9. As LCSD was already reviewing the planning process, The Ombudsman did not consider a direct investigation necessary at this stage. However, we recommended that LCSD:

(a) take steps to improve and maximise utilisation of the less popular swimming pools;

(b) establish procedures for, and document, the deliberation and decisions on how trends of aquatic activities are identified or analysed, why such trends are accepted for planning purposes, as well as how a particular type of pool facilities is decided on;

(c) fine-tune the Guidelines in consultation with Plan D in planning new swimming pool complexes;

(d) set a timeframe for finalising discussions with Plan D on the standards for provision of public swimming pools, and for reviewing them later; and

(e) adopt the same approach for planning other leisure and cultural facilities.

10. LCSD accepted our recommendations.

Cases Concluded under Internal Complaint Handling Programme

HOUSING DEPARTMENT ("HD")

Case No. OMB 2005/2297

Public housing allocation – revoking the allocation of public housing unit to the complainant without her consent

The Complaint

The complainant alleged that HD staff had advised her to quit her public rental housing ("PRH") unit in view of her frequent rows with neighbours. HD had allocated another unit in the same block to her, but when she asked for a rent reduction, HD revoked the allocation instead.

Eviction Justified and HD Too Lenient

2. This Office noted that as the complainant had long been causing nuisance to neighbours, HD had issued her a Notice-to-Quit.

3. The Department had allocated a unit in the same block to her, but she refused to move there on account of the higher rent. HD then withdrew the allocation. Eventually, she accepted HD's offer of another unit in another estate in the district.

4. It was evident that the complainant had "seriously breached the tenancy agreement" and incurred termination of her tenancy and that her appeal to the Appeal Panel (Housing) had been rejected. We considered that HD should have recovered her unit quickly as a deterrent. By offering her another unit time and again, HD had been too lenient. It was also unfair to behaving tenants and new PRH applicants on the waiting list.

Improvement Measures

5. On our recommendation, HD imposed new restrictions requiring ex-tenants of similar background to wait two years before applying again for PRH. Furthermore, the unit eventually offered would not be better than that before. The authority for lifting such restrictions was set at the Assistant Director level.

POST OFFICE ("PO")

Case No. OMB 2005/2443

Redirection service – causing inconvenience by issuing identical confirmation letters to both old and new addresses of the complainant

When the complainant moved to a new address, he applied to PO on 19 July for redirection service to take effect from 25 July. He then received a confirmation letter dated 28 July stating that the redirection

service would take effect as from that day. A couple of days later, he was notified by the landlord of his former residence that there was a Notification Card asking him to pick up a registered mail item. He had to take a special trip to get the card and another trip to collect the mail from the designated post office. He then found that it was just a duplicate of the confirmation letter already sent to his new address. He felt much inconvenienced by this.

Prevention of Abuse

2. PO explained that the purpose of issuing two confirmation letters, to both the old and new addresses of applicants for mail redirection service, was to verify the authenticity of an application and to prevent abuse of the service. PO also admitted that due to an oversight, the redirection service had not commenced on 25 July as requested by the complainant. The delivery postman concerned, however, was aware of the situation and, therefore, had redirected all the mail items received from 25 to 27 July to the complainant's new address on 28 July.

Service Improved

3. PO had cautioned the staff concerned to ensure that they would handle similar situations more discreetly in future. It had also improved the service with the Notification Card endorsed with a remark "Confirmation of application for redirection of mail service" so that recipients would be better informed of the subject of the undelivered mail.

Cases Concluded under Rendering Assistance/Clarification

AGRICULTURE, FISHERIES AND CONSERVATION DEPARTMENT ("AFCD")

Case No. OMB 2005/0601

Permit fees – disparity in processing applications for importing turtles

Different Fees for Importing Turtles

The complainants were importers and traders in baby turtles. Under AFCD regulations, there were two categories of special permits for importing turtles: namely turtles for pets and turtles for food. Fees for the former were levied based on the quantity and those for the latter on their weight. The complainants claimed that the cost of importing a baby turtle for food was only about 1/80 of that for a pet.

2. The complainants had asked AFCD whether they could apply for a food turtle permit to import baby turtles but the answer was negative. They were dissatisfied when they discovered later that the Department had approved another trader to do so.

Different Licences

3. Before issuing a permit for importing turtles, AFCD would check whether the importer held an appropriate Animal Trader Licence. If the importer only possessed a licence to sell pet turtles, he could

not apply for a permit for importing food turtles. Nevertheless, there was no legal restriction on the kind of turtles that could not be imported as food. Nor was it necessary to indicate the age of the turtles to be imported. An applicant would satisfy the requirements for importing food turtles if he held a licence to sell them.

AFCD Requirements Justified

4. This Office noted that AFCD had different requirements for the trading premises and health examination of food turtles and pet turtles. It was, therefore, in the interest and safety of the public for AFCD to require different permits for their imports. There was nothing improper for the traders to file their applications and AFCD to issue the permits in accordance with the regulations.

Loopholes in Control

5. However, as the permit fees for food turtles were levied based on weight whilst baby turtles were smaller and lighter, some traders might be tempted to apply deliberately for a food turtle permit to import baby turtles but then sell them as pet turtles. That was clearly against the law. In this light, our Office proposed and AFCD agreed to seek advice from the Independent Commission Against Corruption and review the relevant policy to plug the loopholes for abuse.

AGRICULTURE, FISHERIES AND CONSERVATION DEPARTMENT ("AFCD")

Case No. OMB 2005/1147

Licensing – unreasonably revoking the complainant's Livestock Keeping Licence

The complainant alleged that although she had ordered baby pigeons and renovated her pigeon farm, AFCD still revoked her Livestock Keeping Licence because she no longer kept any pigeons. To prove that no pigeon was kept in her farm, AFCD staff had asked people to sign papers for confirmation and conducted special monthly inspections. Moreover, the Department had failed to inform her properly before revoking her licence.

Revocation Justified

2. AFCD explained that it had revoked her licence in accordance with the law as she no longer kept any pigeons. Had the complainant really intended to resume the operation of her pigeon farm, she would not have wasted a year waiting for the supply of baby pigeons. She renovated her pigeon farm just to respond to AFCD's advice to improve its biosecurity measures. In this light, our Office considered that the complainant's aim was to keep her licence but did not intend to resume operation.

3. Since October 2004, AFCD had been conducting monthly inspections of all farms to check the numbers of livestock for clearer understanding of the operation of the livestock industry overall and better control over diseases. In this case, AFCD staff had only asked the responsible persons on site to sign in confirmation of the numbers recorded.

Misdelivery of Warning

4. As for informing the complainant, the Department had sent "warning letter" only by ordinary mail before revoking her licence. There was indeed the possibility of misdelivery. This Office, therefore, suggested that AFCD consider other ways of issuing letters of such importance, such as delivery by hand during inspections to avoid unnecessary dispute.

CORRECTIONAL SERVICES DEPARTMENT ("CSD")

Case No. OMB 2004/4264

Supply of materials – failing to provide inmates with personal sports shoes, thus causing athlete's foot infection

The Complaint

The complainant, an inmate of a prison under CSD, alleged that the prison management had failed to provide personal sports shoes. This resulted in his contracting athlete's foot through sharing of shoes with other inmates.

CSD's Comments

2. CSD indicated that all sports shoes provided in its prisons were thoroughly cleansed after use. Before issuing to inmates, the physical training instructor would examine the shoes to ensure that they were up to hygiene standards.

3. Furthermore, the resident doctor considered there to have been no connection between the complainant's athlete's foot and the condition of the sports shoes.

Independent Medical Advice

4. This Office consulted the Department of Health ("DH"), which pointed out that the risk of infection could be minimised by properly cleansing the sports shoes after use. However, to effectively prevent athlete's foot infection, one should avoid sharing footwear with others as far as possible.

Conclusion and Recommendation

5. As no direct relationship could be established between the shared use of sports shoes in the prison and the complainant's athlete's foot, this complaint was not substantiated.

6. However, in view of DH's advice, this Office suggested that CSD consider supplying personal sports shoes to inmates, resources permitting.

7. We were pleased to note that CSD at least agreed to allow inmates to purchase their own sports shoes.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2004/4771

Street management – failing to action effectively against illegal extensions and obstruction on pavements

The complainant alleged that flower shops in a certain street constantly put their goods on the pavement, causing serious obstruction and much inconvenience to local residents. He had lodged several telephone complaints with FEHD, but was told by its staff that the Department did not have adequate resources to deal with the problem. He considered FEHD to have failed in tackling the problem effectively and efficiently.

FEHD Action

2. FEHD had arranged a clearance operation ten minutes on receiving the complainant's first call in late January 2004, but found that the articles causing obstruction had already been cleared by the shops. When the complainant called again in late December, the Department conducted a site inspection a few days later. There was obstruction on the pavement and verbal warnings were issued to the shop operators concerned. The FEHD officers responsible also informed the complainant of the results on both occasions.

3. FEHD further organised a joint operation with the Police afterwards, serving over 300 summonses on shop operators and seizing abandoned articles. Together with other Government departments, it held meetings with representatives of the flower trade to address the obstruction problem. The trade representatives proposed that Government provide a new site for the trade.

4. Meanwhile, the FEHD staff who answered the complainant's calls denied having spoken about the Department's resources. We would not comment on that for lack of independent evidence.

Our Observations

5. The Ombudsman considered that FEHD had been positive, conscientious and proactive in tackling on-street obstruction albeit without a permanent solution as yet. It had promptly and appropriately responded to the complaints and deployed reasonable resources to monitor and control the situation. In the long run, moving the trade to a more suitable location would help solve the problem.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2004/4777

Environmental hygiene – failing to follow up a complaint properly and curb hygiene nuisance in a public open space

The complainant alleged that the public open space near his housing estate was often occupied by nearby shop operators with goods for peddling, seriously affecting the hygiene condition in the area. Although he had complained to FEHD, the Department failed to follow up properly and the problem continued.

FEHD Action

2. Initial — Upon receipt of the complaint, FEHD had stepped up its efforts to clear the open space and taken enforcement action against the offenders. However, as the goods were placed in the sitting-out areas in the open space and caused no obstruction to passers-by or to FEHD staff cleansing the place, it would be difficult to initiate prosecution.

3. On our suggestion — This Office found that the open space involved the jurisdiction of several departments. We, therefore, suggested that FEHD approach the local District Officer ("DO") for an inter-departmental meeting to clarify responsibilities.

4. At the request of FEHD, DO called a meeting attended by representatives from the Housing Department, Leisure and Cultural Services Department, the local District Lands Office ("DLO") under the Lands Department, Highways Department and FEHD. The meeting discussed improvement measures such as installing fences or putting benches or planters in the sitting-out areas to prevent shop operators from placing their goods there. Meanwhile, FEHD would continue its daily cleansing operation.

5. A joint clearance operation was conducted by FEHD and DLO after the meeting. FEHD also issued warning letters to the shop operators, stating that they would be immediately prosecuted if such irregularities recurred.

Conclusion

6. Our subsequent site visit showed that the hygiene condition had greatly improved. FEHD undertook to continue to monitor the situation, step up enforcement action and conduct joint operations with DLO again when necessary.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2005/1362

Enforcement – (a) lax in enforcement so that a factory canteen operated unlicensed for over two years; and (b) lack of response after interim reply

The complainant lodged a complaint with FEHD against an unlicensed factory canteen. However, the canteen continued to operate while applying for a full licence. Allegedly, FEHD was lax in enforcement and slow in processing the licence application so that the canteen continued operation for over two years. Meanwhile, the complainant had written to FEHD for the progress on the case but no response was given other than an interim reply.

Enforcement Action Taken

2. Our investigation found that FEHD had acted promptly upon receipt of the complaint and taken such enforcement action against the canteen as instituting prosecution and referring the case to the police. FEHD had undertaken to continue to monitor the operation of the canteen. This Office, therefore, considered the Department not lax in enforcement.

3. However, this Office noticed that the two owners of the canteen had submitted separate applications for "provisional licence" in rotation as an expedient to prolong its "legitimate" operation without a full licence. We considered that FEHD should stop the applicants from using such tactics to evade the stricter requirements for a full licence.

Human Error

4. As regards the allegation of no further response after the interim reply, FEHD admitted that it was sheer human error. The staff concerned was disciplined and an apology issued to the complainant.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2005/2040

Compensation claim – rejecting the complainants' claim for compensation unreasonably

The complainants alleged that FEHD staff visited their flat to investigate a case of dripping from air-conditioners when only their son was home. During investigation, FEHD staff opened a window and it fell to the ground. The complainants claimed for compensation but FEHD rejected it.

Investigation notwithstanding Withdrawal

2. The complainants later requested withdrawal of their complaint. On examination of the case, however, The Ombudsman decided to continue the investigation under section 11 of The Ombudsman Ordinance as it was a matter of public interest.

3. This Office considered FEHD to have followed established procedures and guidelines. The Department had assigned a different officer to inspect the fallen window to ensure impartial investigation, thus avoiding conflict of interests among FEHD staff concerned. The Department of Justice had advised that the occupier had a duty to maintain windows in a safe and secure state capable of being opened and closed safely. In this light, FEHD had reason to reject the complainants' claim. They could still pursue the matter by legal channels.

Need for Staff Guidelines

4. In the course of our examination, we found that FEHD lacked guidelines on this. The Department should, therefore, instruct staff that in any incident involving loss of or damage to personal property in the performance of their duties, the parties concerned must be advised of the ways and procedures to make claims.

FEHD Accepted Suggestion

5. FEHD accepted The Ombudsman's suggestion to include new provisions in its administrative circular, instructing frontline staff on how to notify the parties concerned in similar incidents and to take the initiative to advise them on the rights and procedures in claims.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD") AND ARCHITECTURAL SERVICES DEPARTMENT ("Arch SD")

Case Nos. OMB 2004/4591; OMB 2005/1312

FEHD – market stall – (a) failing to ensure proper installation of electrical system; and (b) delay in processing a claim for compensation

Arch SD – market stall – failing to ensure proper installation of electrical system

The complainant had made a successful bid for a cooked food stall in a market. He complained against FEHD and Arch SD for failing to ensure proper electrical installation at the stall upon handover. This delayed his application for electricity and operation of business, thus incurring loss. He also alleged that FEHD had delayed the processing of his claim for compensation.

Problem in Electrical Installation

2. After his successful bidding, the complainant reported that the power company considered the electrical installations of the stall sub-standard. As FEHD had no expertise in inspecting and replacing electrical installations at market stalls, it had to rely on the services of Arch SD. According to FEHD records, it had requested Arch SD to inspect the electrical installation at the vacant market stall in question. The stall was put up for auction after inspection by Arch SD's contractor. Upon notification by the complainant of the problem in the electrical installation, FEHD immediately liaised with Arch SD and the problem was remedied by the contractor. This Office considered that FEHD had acted appropriately.

Possible Causes

3. We reckoned the problem to have had three possible causes:

(a) Arch SD's contractor might have failed to inspect and replace the old electrical installation properly;

(b) the installation might have been vandalised after the contractor's completion of works and before the handover to the complainant; and

(c) the installation might have been damaged by the electrical contractor hired by the complainant.

4. Regarding the first possibility, it was difficult for this Office to judge as the Arch SD staff responsible had already resigned and the Department could not locate its inspection records. Arch SD guidelines required staff to report to their supervisors only when problems with contractors' service were identified. Besides, the staff or contractors were not required to report on the cause and responsibility even when problems arose after completion of works. As such, the Department could not ascertain whether its staff had inspected the works or not in this case.

5. On the second possibility, FEHD pointed out that the installation at vacant market stalls could easily be vandalised because the stalls had no gates.

6. As for the third possibility, the complainant claimed that his electrical contractor had only inspected the installation at his stall without carrying out any works.

7. Since there was insufficient corroborative evidence, this Office could not comment on the cause for the defective electrical installation in the market stall.

Claim for Compensation

8. Soon after submitting to FEHD his claim for compensation, the complainant withdrew it. However, he later wrote time and again to ask for compensation. After seeking legal advice, FEHD replied to the complainant several times, stating the grounds for rejection. There was, therefore, no delay in processing his claim.

Recommendations

9. This Office considered that Arch SD should review its internal guidelines and incorporate proper inspection procedures for monitoring the work of its staff and contractors. Should problems arise after completion of works, Arch SD should require its staff and contractors to submit a report. We also recommended that FEHD and Arch SD work out a way to ensure that the inspected and replaced electrical systems at vacant market stalls would not be vandalised.

10. FEHD and Arch SD implemented our recommendations.

Summaries of Selected Cases Concluded by Preliminary Inquiries

HOME AFFAIRS BUREAU ("HAB")

Case No. OMB 2005/1115

Subsidy scheme – failure to monitor a subsidised community project

The Complaint

The complainant alleged that the Home Affairs Bureau ("HAB") had misused public funds in subsidising the publication of an indecent pamphlet.

The Scheme

2. The subsidy scheme was meant to support community projects for promoting a specified cause. However, HAB required copies of publications from grantees not for screening but for records only.

What HAD Did

3. Regarding the publication in question, HAB had offered some comments to the grantee. The organisation responded by making some amendments.

Our Observations and Comments

4. This Office was not concerned about the nature or substance of the publication. Our focus was whether HAB's monitoring was adequate to ensure that beneficiary projects met the objective of the subsidy scheme.

5. In response to this complaint, HAB reviewed the scheme and decided to cancel the requirement for submitting publications altogether. We considered such a measure to render it even more difficult for the Bureau to monitor subsidised projects. The Ombudsman, therefore, urged HAB to further review the scheme and the related procedures for proper monitoring.

HOME AFFAIRS DEPARTMENT ("HAD")

Case No. OMB 2005/0583

Building management – (a) refusing to assist the complainant in requesting his Owners' Corporation to present its accounts; (b) misinterpreting the Building Management Ordinance; and (c) providing wrong advice at an owners' meeting

The Complaint

In 2005, the complainant alleged that a staff member Ms A of a District Office ("DO") under HAD had refused to assist him in requesting the Management Committee ("MC") of his Owners' Corporation ("OC") to present the accounts for the previous six years and misinterpreted paragraph 1(2) of Schedule

3 to the Building Management Ordinance ("BMO"), while another staff member Ms B had provided wrong advice at an owners' meeting.

Active Follow-up

2. HAD explained that between January and March 2005, Ms A had liaised with some owners and the MC chairman on the owners' request to inspect accounts. Through her mediation efforts, the MC finally met some owners in March and presented the audited financial reports for the previous six years at the owners' meeting in July.

3. This Office considered that Ms A had taken positive and proper action. She had offered practical advice and facilitated communication between the owners and the MC. The matter was finally resolved at the owners' meeting.

Correct Interpretation of BMO

4. Paragraph 1(2) of Schedule 3 to BMO states that "the chairman of the management committee shall convene a general meeting of the corporation at the request of not less than 5% of the owners for the purposes specified by such owners within 14 days of receiving such request". Ms A suggested that "convene" should mean serving a notice of meeting to owners rather than holding the meeting within 14 days.

5. This Office considered her interpretation correct. Nevertheless, in view of the ambiguity of the word "convene" (particularly its Chinese version "召開"), we recommended that HAD give detailed explanation when quoting that provision in future.

6. HAD has instructed staff to do so and enhanced publicity to promote public understanding of the provision.

Right Advice

7. At the owners' meeting in July 2005, some owners requested copies of the OC's financial accounts for auditing by their accountants. While the OC chairman agreed to the request, some MC members argued against it since the accounts had already been audited by certified accountants. Ms B advised that under BMO, such request would require a resolution of the owners' meeting. As there were divergent views, Ms B suggested that the MC should seek legal advice.

8. We considered Ms B's advice appropriate and reasonable.

Owners' Responsibility

9. Building management is the joint responsibility of all owners. HAD only acts as adviser to OCs and owners. Effective building management depends on cooperation among owners.

HOME AFFAIRS DEPARTMENT (“HAD”)

Case No. OMB 2005/1283

Tendering exercise – unfairly rejecting a tender

The Complaint

A District Office (“DO”) under HAD had awarded a contract to another bidder even though the complainant’s offer was the lowest and a staff member at HAD headquarters (“Mr C”) had told him that his company had no previous adverse report. He, therefore, considered the tender result unfair.

HAD’s Tender Procedures

2. Government is not bound to accept the lowest or any quotation in a tender. A bidder’s financial capability and past performance are also considered in tender assessment.

3. HAD had consolidated the Lists of Approved Contractors of all its DOs into one. All contractors’ performance records for works completed before then were “waived”. This “waiver” was necessary as some contractors had belonged to more than one district lists and might have more than one poor performance reports in the aggregate, which if so counted would result in their downgrading or removal from the consolidated list. Nonetheless, this did not mean that a contractor’s previous performance would be totally ignored in subsequent tender assessment.

4. The contract in question involved urgent repair works and called for a high degree of site safety and timely completion. The complainant’s company, although the lowest bidder, had acquired poor ratings for site safety and progress in two projects in another district in the past 12 months. The contract was, therefore, awarded to the second lowest bidder. HAD had explained this in two letters to the complainant.

5. Furthermore, Mr C denied having told the complainant that his company had no adverse reports.

Our Comments and Suggestion

6. Public interest is of paramount importance. It was reasonable and responsible of the DO to consider all relevant factors, including the bidders’ past performance, before awarding the contract.

7. In the absence of independent evidence, the allegation against Mr C was inconclusive.

8. The Ombudsman suggested that HAD specify in tender documents that it would consider bidders’ past performance as appropriate. The suggestion has been implemented.

HONG KONG EXAMINATIONS AND ASSESSMENT AUTHORITY ("HKEAA")

Case No. OMB 2005/0229

Seating at public examination centre – (a) improper seating arrangements for oral examination; (b) failure to give advance information on seating arrangements; and (c) bias in handling a candidate's complaints and appeals

The complainant sat for the Language Proficiency Assessment for Teachers (English Language) ("LPATE") in September 2004. She claimed that her performance at the Group Interaction session of the Speaking Assessment of LPATE had been adversely affected by the seating arrangements at the examination centre. Desks provided for candidates were removed such that candidates in the group were scattered and she, being seated on one side, was unable to get the attention of the Oral Assessors. Moreover, HKEAA had not announced the seating arrangements prior to the assessment. She had lodged several complaints with the Authority after the assessment results were released, but considered the replies unsatisfactory.

2. She also felt aggrieved that her complaints and appeals for a review of her assessment results had been handled and decided by the Subject Officer for LPATE alone, showing that HKEAA was biased towards the Assessors.

Assessors' Discretion

3. HKEAA explained that at the training sessions for LPATE Assessors prior to the assessment, it was agreed that Assessors could exercise discretion to provide desks or otherwise for candidates during the Group Interaction, having regard to the situation. The Assessors concerned had not deviated from the Authority's guidelines when they decided not to provide desks for that session, although HKEAA neither kept a record of the above resolution nor amended its Instructions to Oral Assessors.

Seating Arrangements

4. The complainant held that, as desks were provided for group discussions at the Hong Kong Certificate of Education Examination and the Hong Kong Advanced Level Examination, with seating plans publicised on the HKEAA website in advance, similar arrangements should be made for LPATE. HKEAA explained that for the two named examinations, seating plans were made and announced beforehand to ensure proper order at centres. However, LPATE candidates might benefit from a more relaxed setting. Assessors hence could decide whether desks should be provided during Group Interaction.

Appeals Processed by Special Panel

5. HKEAA could not furnish us with its internal guidelines on complaint handling, but indicated that it had reviewed the assessment records maintained on the complainant, and a special panel chaired by the Deputy Secretary General had also considered her complaints and appeals. The final decision was therefore not made solely by the Subject Officer. His reply that Assessors could exercise discretion on the provision of desks was also based on facts.

6. Guidelines issued to LPATE candidates indicated that all views or complaints in relation to the administration of LPATE should reach HKEAA on or before 27 September 2004 in writing. Given the complainant's claim that non-provision of desks had seriously affected her performance, her silence until the announcement of results in mid-December was hardly justifiable.

Improvements Suggested

7. Whilst HKEAA had on the whole handled the case properly, this Office suggested that, in future, any new arrangements or decisions on LPATE administration should be properly recorded and the relevant guidelines amended. Guidelines specifying the authority and responsibility of individual staff members in complaint handling should be formulated and an appeal channel established. This should prevent unnecessary allegations of abuse of power or bias.

8. The complainant twice sought review of her case after this Office had completed the inquiry. She raised a number of queries and furnished us with additional information related to LPATE. After careful re-examination, however, The Ombudsman decided to maintain her conclusion as there was insufficient ground for the allegations.

HOSPITAL AUTHORITY ("HA")

Case No. OMB 2005/1176

Medical service – (a) surgeons failing to give patient timely consultation despite repeated reminders; and (b) porters leaving the patient unattended after X-ray examination and delaying her return to the ward for timely resuscitation

Delays Alleged

The complainant's mother ("the patient") was admitted to a hospital under HA on 13 January and her case jointly taken up by the hospital's Medical Department ("MD") and Surgical Department ("SD"). The complainant alleged that the surgeons, having examined the patient on 17 and 18 January, ignored two reminders from MD for consultation. It was not until 21 January when the patient's condition deteriorated that they examined her again.

2. Furthermore, at around 6:30 p.m. that evening, after the patient had finished her X-ray examination, the porters took off their protective clothing and went away, leaving the patient unattended for some 20 minutes before taking her back to her ward. She was later found unconscious and died early the next morning. The complainant considered that such delay had lost the patient the chance of timely resuscitation.

No Urgency Initially

3. MD had issued a consultation form to SD on 19 January, suggesting that the latter took over the patient but indicating at the same time that the case was not urgent. As the surgeons had already

assessed her condition on the previous two days, they considered further examination not necessary for the time being. However, they did not inform MD of this decision and the latter issued two reminders for SD consultation on 20 and 21 January.

4. On the afternoon of 21 January, the patient showed symptoms of intestinal obstruction. MD doctors arranged for her to have a special abdominal X-ray examination and sent an urgent request to SD for consultation. The surgeons then came at once.

No Gowning Up for Porters

5. Conducted in two rounds, the X-ray examination started at about 2 p.m. and finished around half-past six. HA explained that porters who transferred patients between the wards and X-ray room did not need to be gowned up. The porters having "degowned and left the patient unattended", thereby causing delay in taking the patient back to the ward for resuscitation as alleged by the complainant was, therefore, out of the question.

Better Communication Necessary

6. The surgeons should have informed MD at once when they decided that the patient did not need further examination on 19 January. Then MD would not have issued repeated reminders, causing the patient's family to misunderstand that the surgeons were apathetic. Such lack of communication and coordination could have been avoided.

7. Hospital records and written statements by the staff concerned showed that the patient had been returned to her ward within four minutes after X-ray examination. This Office considered this reasonable.

8. HA had reminded staff to improve internal communication so that doctors' decisions could be properly explained to patients and their families.

HOUSING DEPARTMENT ("HD")

Case No. OMB 2004/4321

Flat transfer – unjust cancellation of the complainant's application for transfer to another public housing estate

The Complaint

The complainant alleged that HD was unjust in cancelling his application for transfer to another public housing estate merely because he had failed to update his household composition.

HD's Justification

2. HD had written to invite the complainant and his family members to complete the formalities for transfer at the estate office. However, the complainant rang and refused to accept an offer of a flat for transfer as his father was unable to attend the interview. HD subsequently wrote to notify the complainant that his application had thus been cancelled.

3. Later, HD further explained, to a Legislative Councillor, that it had cancelled the application because the complainant's household composition had changed from that stated in the application form.

No Injustice but Inaccuracy

4. The complainant claimed that his father had passed away in the Mainland and hence could not attend the interview, but he failed to produce a death certificate. The Ombudsman, therefore, considered it neither inappropriate nor unjust of HD to cancel his application for transfer.

5. This was indeed why the application had been cancelled, not because the complainant had "refused to accept an offer of a flat for transfer" or his "household composition had changed from that stated in the application form" as claimed by HD.

Other Observations

6. We found that such confusion over the reason of cancellation was due partly to HD practically delegating the authority for allocating public housing units to a property services company ("PSC"). The PSC determined whether applicants had completed the formalities and then notified HD with standard wording. There was no monitoring of the PSC to ensure accurate information and proper processing.

7. HD also gave wrong information to the Legislative Councillor. The Ombudsman considered that such slipshod handling of a case to tarnish Government's image.

Improvement Measures

8. HD accepted The Ombudsman's recommendations:

(a) to require the PSC to consult the Department on special cases and to spot-check cases for cancellation of applications or rejection of transfer offers;

(b) to revise PSC's memo to avoid misuse of the standard wording; and

(c) to remind HD staff to give accurate information when responding to complaints or enquiries.

HOUSING DEPARTMENT ("HD")

Case No. OMB 2004/4335

Estate services – (a) delaying slope maintenance works; and (b) installing substandard lifts

The Complaint

The Owners' Corporation ("OC") of a Home Ownership Scheme estate alleged that HD had not only delayed the maintenance works of a slope in the estate but also unfairly tried to shift the maintenance responsibility to the OC. Moreover, the lifts in the estate were substandard and their frequent breakdowns inconvenienced the residents considerably.

Responsibility for Slope Maintenance

2. HD stated that before the sale of the estate, the Geotechnical Engineering Office had confirmed the safety of the slope. This was confirmed again after four comprehensive inspections by the consultant employed by HD, the estate manager according to the Deed of Mutual Covenant. HD staff also carried out at least three routine inspections each year and no structural problem had been identified.

3. This Office considered that HD had fulfilled its administrative duty for slope safety. Furthermore, the sales brochure clearly stipulated that owners were responsible for the management and maintenance of the slope. HD, therefore, had not shirked responsibility.

Quality of Lifts

4. HD admitted that the lift service at one of the buildings had once been suspended for 25 days due to breakdown of the motor and the unavailability of spare parts locally. As the technical standards of the lifts and causes of breakdown fell within the scope of electrical engineering, these were not administrative matters for this Office. Our focus was on whether HD had followed proper procedures in procuring the lifts.

5. This Office noted that all the tenderers had been on the Housing Authority List of Lift and Escalator Contractors. HD had duly examined the lift specifications, the usage of the different models in the market and the arrangements for future maintenance. There was no maladministration in the procurement process.

Recommendations

6. However, to avoid the problem of unavailability of spare parts, this Office recommended that HD stipulate in contracts the requirement of constant supply of all necessary spare parts. The OC should also consider incorporating similar provisions in its future maintenance contract.

HOUSING DEPARTMENT ("HD")

Case No. OMB 2005/0048

Squatter control – trespassing on the complainant's squatter hut area and failing to respond to his specific queries

The Complaint

The complainant lived in his father's squatter hut in the New Territories. Allegedly, HD staff had trespassed on the area of the hut to post demolition notices. He questioned whether HD staff were authorised to do so, but no specific response was given.

Department's Action Justified

2. HD had found an unauthorised structure in an enclosed area outside the hut. The Department had issued verbal warnings and notices urging the complainant's father to demolish it and to cease illegal occupation of Government land. However, he turned a deaf ear. During a subsequent inspection, HD staff found another illegal canopy to be under construction. They thus entered the fenced area through an unlocked iron gate and posted notices on the two unauthorised structures to indicate the offences.

3. The enclosed area was, in fact, unleased Government land. The house owner had not been granted a Government licence or short term tenancy. HD staff had entered Government land that day.

4. This Office considered that the complainant's father had occupied the unleased Government land illegally. HD staff had not trespassed on any private lot or damaged any private property. They were only performing their duty and their action was reasonable and legitimate.

Timely Response

5. As regards the complainant's subsequent queries, HD had responded immediately by explaining the above to him. As the Department had also given a written reply, we considered that it had clearly answered the complainant's queries.

HOUSING DEPARTMENT ("HD")

Case No. OMB 2005/0306

Estate maintenance – ineffective monitoring of property services agent, causing delays in repair works

The Complaint

The Owners' Corporation ("OC") of a Home Ownership Scheme estate complained against HD for

ineffective monitoring of its property services agent ("PSA") resulting in delay in repairs to a skylight glass pane and a glazed door at the shopping centre of the estate.

Broken Skylight Glass Pane

2. According to HD, upon learning in April 2003 that the glass pane was broken, the PSA immediately inspected and fenced off the area. The PSA notified the contractor for repair but failed to source a suitable glass pane until March 2004. It then took time to bargain with the contractor. The situation was compounded by the departure of its works staff and the contractor's request for terminating its service contract with HD. It was not until February 2005 that the works were completed.

Damaged Glazed Door

3. When the glazed door was found damaged in early December 2004, the PSA immediately sealed off the area. The repair works dragged on because the PSA had to bargain with the contractor and the timing for ordering and delivering the materials was affected by public holidays. The works were completed in mid-March 2005.

HD's Responsibility

4. This Office considered that although HD had outsourced the management of the shopping centre, it was still responsible for provision of quality services. HD was aware of the delays but it neither took over the works nor pressed the PSA for timely completion. In this light, we held HD partly responsible for the delays.

Recommendations

5. This Office urged HD to strengthen its monitoring of the PSA's services and to intervene where necessary. HD should also apologise to the complainant.

6. HD accepted our recommendations.

HOUSING DEPARTMENT ("HD")

Case No. OMB 2005/1266

Public housing allocation – impropriety in allocating to the complainant a unit with seepage problem

The Complaint

The complainant alleged that HD had allocated to him a public housing unit with seepage. Despite repairs, the problem had persisted and works continued. The Department, however, did not allocate a replacement unit and made him pay rent for the problematic unit. He thus asked for a refund of part of the rent.

No Maladministration

2. This Office considered that HD had taken appropriate action to cope with the water seepage. It also subsequently agreed to provide a comparable replacement unit to the complainant. From this angle, no maladministration was perceived.

Rental Partially Refunded

3. As regards the complainant's request for partial refund of the rent, this Office considered that since the seepage had indeed lasted for some time, necessitating continual repair works, resulting in the complainant not being able to move in, HD should consider acceding to the request. HD eventually agreed.

HOUSING DEPARTMENT ("HD")

Case No. OMB 2005/1585

Allocation of public housing – unfairly rejecting the complainants' request to select a two-bedroom unit from blocks other than those designated

The Complaint

Affected by a redevelopment project, the complainants' three-member family was granted transfer to another estate ("Estate A") by HD. They could choose a two-bedroom unit ("2B") from two designated blocks or a one-bedroom unit ("1B") from the other blocks within the estate. The complainants alleged that when all the 2Bs in the designated blocks had already been taken up, HD unfairly refused to let them select a 2B from the other blocks.

Allocation Standards

2. Estate A comprises six "New Harmony Blocks" ("NHB") and two blocks converted from a Home Ownership Scheme project (i.e. the two designated blocks). HD explained that the 2Bs in the NHB are bigger than those in the designated blocks and are meant for four- to five-member households. Hence, if three-member families (such as the complainants') preferred a 2B, they could only choose from the designated blocks. This arrangement followed the allocation standards set by the Hong Kong Housing Authority.

3. Each household affected by the redevelopment was allotted a priority number randomly determined by computer. As all 2Bs in the designated blocks had been taken up by households with higher priority, the complainants could only select a 1B from the NHB.

Our Comments

4. As a valuable resource, public housing must be allocated according to established policies and standards. Hence, it was not unfair for HD to reject the complainants' request.

Summaries of Selected Cases Concluded by Preliminary Inquiries

IMMIGRATION DEPARTMENT ("Imm D")

Case No. OMB 2005/2935

Birth registration – providing wrong advice on a Chinese character

The Complaint

The complainant alleged that in registering her son's birth, a staff member of Imm D had indicated that one of the Chinese characters in her son's name could take different forms, all being acceptable. However, she later found that the form selected was not commonly accepted. She, therefore, complained that the staff member concerned had given wrong advice.

Imm D Practice

2. Under the current practice, Imm D staff would list all the different forms of a Chinese character for the applicant's selection. Authoritative Chinese dictionaries were also available for reference. However, Imm D staff could not be expected to provide expert advice. Moreover, as applicants had their own preference, staff would accept their choice.

Our Observations

3. This Office considered such practice acceptable.

4. We also noted that the complainant had signed on her son's birth return to confirm the Chinese characters in his name. As the incident took place some years ago, the staff involved could not recall what had happened. Without other evidence, we could not ascertain whether the staff member had actually advised her on the form of the character in question.

5. The complainant eventually applied for alteration of the form of the Chinese character and was issued a new certified copy of birth entry.

INLAND REVENUE DEPARTMENT ("IRD")

Case No. OMB 2004/4558

Disclosure of information – (a) unauthorised disclosure of complainant's tax information; and (b) delay in giving a reasonable explanation

The complainant, a private company, alleged that IRD had sent its profits tax computations to a third party ("Company A") without its consent. It wrote to IRD thrice in mid-2004 and asked for an explanation but received no substantive reply until late December.

Tax Representatives

2. Registered tax representatives ("TRs") could submit applications to IRD on behalf of client taxpayers for extension of time to file tax returns. Company A had written to the Department several times in the capacity of the complainant's TR to apply for extension of time in lodging profits tax returns for the assessment years 2000/01 to 2002/03 under the Block Extension Scheme ("BES"). The applications were accepted by IRD without asking for a written authorisation, as IRD would only do so when in doubt.

3. IRD received the complainant's profits tax return for 2000/01 in April 2002 indicating no appointment of TR. The Department thus amended its file records accordingly. However, when Company A applied for extension in October 2002 and April 2003 on behalf of the complainant under BES, the file records were again updated to show a TR. IRD stressed that it had not received any application for extension directly from the complainant for profits tax returns of 2000/01 to 2002/03. So it followed standard procedures and sent information of the complainant's tax assessments and computations to Company A in 2004.

Lack of Authorisation

4. The complainant wrote to IRD in May, June and September 2004 demanding explanation for such disclosure to Company A. Upon the Department's request for clarification, Company A admitted that it had only obtained verbal appointment from a director of the complainant to apply for extension although written authorisation is required by law. IRD subsequently gave the complainant a substantive reply and apologised in late December. It also amended its records by deleting Company A as the complainant's TR.

Need for Revised Guidelines

5. While IRD had followed its internal guidelines in handling the case, The Ombudsman suggested that the Department should revise its guidelines to require that all registered TRs obtain proper authorisation from clients.

6. IRD admitted delay in providing a full explanation. It subsequently reminded officers to give an interim reply on progress of investigation in similar cases in the future.

Complainant's Request for Review

7. The complainant objected to IRD's comment that it "had not received any application for extension directly" from it for profits tax returns of 2000/01 to 2002/03, providing copies of two applications made in April 2001 and April 2004. IRD explained that copies of direct applications for extension by taxpayers not under BES and records of standard replies were normally kept for only one year after the year of assessment. So, any records of those two applications had already been destroyed. In any case, the complainant did not indicate in its application of April 2004 that it no longer hired a TR or provide any information to cause the Department to question the continued appointment of Company A as its TR.

Final Remarks

8. This Office considered the IRD comment inaccurate. Nevertheless, we accepted IRD's argument that direct applications from the complainant did not necessarily mean termination of Company A as its TR, as taxpayers could always choose to apply for extension themselves while retaining a TR.

LANDS DEPARTMENT ("Lands D") AND FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case Nos. OMB 2005/2678-2679

Lands D – clearing obstruction – delaying the clearance of metal cages on pavement

FEHD – same – shifting the responsibility to Lands D

The Complaint

The complainant, visually impaired, alleged that metal cages for collecting used clothes on the pavement near his residence caused obstruction and danger. He had complained to FEHD several times and its staff had removed the cages. However, the Department subsequently stated that the responsibility was actually Lands D's. He, therefore, complained against FEHD for shifting responsibility.

2. The complainant accordingly lodged his complaint with the local District Lands Office ("DLO") under Lands D. However, DLO delayed handling the problem on the grounds of manpower constraint. He, therefore, complained against Lands D for the delay.

FEHD's Work

3. As handling of metal cages on public streets indeed fell within the jurisdiction of Lands D, FEHD would refer all complaints to it for follow-up action. However, FEHD would help clear such cages where necessary.

Lands D's Action

4. On noting any such irregularities or receiving public complaints, Lands D would act promptly. Large-scale clearances were generally launched on a bi-weekly basis for better deployment of resources.

5. In fact, each time a complaint was received from the complainant, the metal cages were removed within one week.

Our Observations

6. This Office considered FEHD to have fulfilled its duty by referring this case to Lands D. As for Lands D, due to staff constraint, it could not remove the metal cages immediately on the day of complaint, but arranged regular clearance. This arrangement was acceptable.

7. This Office was pleased that Lands D had drawn up a plan to handle unauthorised metal cages more effectively for consultation with District Councils and other departments.

POST OFFICE ("PO")

Case No. OMB 2004/4546

Loss of parcel – failure to inform the addressee promptly and to follow up the complainant's enquiries

The complainant alleged that a delivery office under PO did not inform her husband ("the addressee") promptly when an air-mail parcel from England to him was lost in early November 2004. Moreover, the staff failed to provide proper assistance upon receipt of her enquiries and complaint.

Staff's Cursive Handwriting

2. PO explained that staff of the delivery office had conducted an investigation and reported to the Police when they learned that the parcel had been lost. A Postal Inspector ("PI") had twice gone to the address written on the parcel delivery card ("the card") to try to notify the addressee of the loss, but no one answered the door. It was not until the end of November when the complainant telephoned to enquire of the parcel's whereabouts that the PI became aware that his colleague's cursive handwriting on the card had misled him to the wrong address.

Delayed Response

3. Unfortunately, the Superintendent of Post/Sorting Office ("Superintendent"), who had handled the case and reported it to the Police, was on leave at that time. Since he had not informed his colleagues of the case before going on leave, the staff answering the complainant's call knew nothing of it and only asked the complainant to wait for the Superintendent to return and follow up the matter. Later, the Superintendent while still on leave contacted the complainant to explain. In the end, the complainant lodged her complaint with PO and this Office in early December.

Resolution

4. Taking over the case, the Manager/Mail Distribution for the area quickly wrote to the sender and the addressee of the parcel to explain what had happened and to apologise.

5. Meanwhile, PO compensated the addressee in accordance with the regulations of the Universal Postal Union.

Need for Improvement

6. This Office considered it improper of PO not to have explained when the parcel was lost. Its staff had failed to write the address clearly on the card, to respond to enquiries promptly, and only told the

complainant to wait for the Superintendent's return for further action. All these pointed to the fact that they were not proactive enough and needed improvement.

7. PO accepted our suggestions for remedial action. It reminded its frontline staff to write legibly and be more careful in handling complaints/enquiries and storing parcels. Meanwhile, PO set up a register in all its delivery offices to record details of enquiries and complaints received.

SOCIAL WELFARE DEPARTMENT ("SWD")

Case No. OMB 2005/3640

Fraud investigation – not allowing the complainant to accompany her mother in an investigation interview and forcing her mother to sign documents

The Complaint

The complainant's mother ("the recipient") had been receiving SWD's Comprehensive Social Security Assistance ("CSSA") for some years. In 2005, the Department suspected fraud. Allegedly, investigation officer Mr A refused to let the complainant accompany the recipient in an interview and even forced the recipient to sign certain documents, causing her great distress.

Suspected Fraud

2. In July 2005, SWD received a report that the recipient had been awarded compensation in a lawsuit outside Hong Kong. Preliminary inquiries revealed that the recipient had not disclosed all her assets.

3. In September 2005, the complainant accompanied the recipient to an interview with Mr A, who suggested a one-to-one talk with the recipient first, with the complainant joining in later. The complainant agreed. Nonetheless, she telephoned the recipient from the outside to ask how things were going and then stormed into the room, criticising Mr A's way of investigation and questioning. Mr A explained that CSSA recipients had the duty to provide full and accurate information about their assets and to produce relevant documents for SWD assessment. The complainant left afterwards.

Two Documents Signed

4. At the end of the interview, Mr A asked the recipient to sign a statement. In the complainant's absence, Mr A acted as the witness and read the statement to her. The recipient signed it after indicating that she understood and agreed to its content.

5. In mid-October, Mr A interviewed the recipient again. Witnessed by another SWD officer, the recipient signed another statement.

6. SWD commented that Mr A had handled the case in accordance with departmental guidelines and regulations.

Our Observations and Opinions

7. Without an independent witness, this Office was unable to ascertain whether the complainant had indeed agreed to the private session between the recipient and Mr A.

8. Her allegation that the recipient had been forced to sign the statements also lacked material evidence. However, we noticed that in the September interview, Mr A, the case officer also acted as witness when the recipient signed her statement. We considered that while it complied with SWD guidelines, such practice was inadvisable and might lead to misunderstanding or even dispute. SWD should, therefore, consider revising its guidelines, stipulating clearly that a witness should be another person.

9. SWD agreed.

VOCATIONAL TRAINING COUNCIL ("VTC")

Case No. OMB 2004/4325

Adequacy of information – insufficient course information on website

The complainant alleged that course information on the website of VTC's Financial Services Development Centre was insufficient such that she had to call its enquiries hotline. Her call was forwarded to its voice mail box. She left a message but never received a reply. Moreover, she had telephoned another hotline. Although she got through, she had to wait for 15 minutes listening to some music without anyone answering her call.

VTC's Explanation

2. VTC explained that the website was its home page, which aimed to allow browsers to download directly the basic information on some of the regular courses offered by the Centre for general reference. However, as course venues and fees might change, such details were not included. Instead, details of all courses were on the Centre's own home page. VTC deeply regretted the confusion caused by the two different web pages.

3. As regards telephone enquiries, VTC explained that the Centre was then going through a merger with three other centres. There were major changes in organisational and staffing arrangements. As a result, services might have been affected. VTC explained that the complainant's unhappy experience could be due to negligence of individual staff members missing her calls and failing to respond to her voice message. In addition, its new staff might have delayed transferring the calls because of inexperience.

Improvement Measures

4. This Office considered that presentation of information on the VTC home page should be improved. We accepted VTC's explanation for the complainant's telephone enquiries not having been handled

properly. We were, however, pleased that VTC had quickly reviewed the system upon receipt of the complaint, adopted improvement measures and apologised to the complainant.

WATER SUPPLIES DEPARTMENT (“WSD”)

Case No. OMB 2005/0307

Water charge – mismatch of account numbers and meter numbers

The complainant alleged that WSD had mismatched consumers’ account numbers and meter numbers, resulting in his paying higher water charges. He had complained to WSD but the Department had refunded him neither the excess payment nor the deposit for his terminated account.

Wrong Assumption in Calculating Excess Payment

2. The complainant took up the water meter originally installed at his premises in January 2004. However, he considered the water charge too high and disputed with WSD over the water charge for the second quarter in August. After investigation, WSD found that the meter number of his unit had been confused with that of the unit downstairs. Since the two meters had been installed for years, WSD could not ascertain the time or cause of the confusion. The staff member handling the case assumed that the confusion had occurred in June when the Department replaced the meter of the unit downstairs with a metric one. He, therefore, only adjusted the water charge for the third quarter. Noting that the complainant had not paid his water charge for the second quarter, WSD used his deposit to offset the outstanding charges and did not give him a refund when he terminated his account in November.

Re-calculation

3. On receiving our referral of the complaint, the Department analysed in detail the water consumption records of the complainant’s unit and the unit downstairs and found that confusion of the two meters had occurred before the complainant took over the account. WSD then adjusted the water charges of the complainant’s unit for the period between January and November 2004 according to the records and refunded the excess payment and full amount of his deposit.

4. This Office considered the WSD staff member careless in investigation in making a hasty assumption without first checking properly. We suggested that WSD instruct staff to handle carefully all disputes about water charges in future.

WATER SUPPLIES DEPARTMENT ("WSD") AND HOUSING DEPARTMENT ("HD")

Case Nos. OMB 2005/2071-2072

Consumer registration – wrongly terminating complainant's account and shirking responsibility

Mistaken Consumer Name

The complainant, a public housing resident, was the registered consumer for his water account. He then discovered that the consumer name on his water bill was "Housing Manager". On enquiry with WSD, the Department replied that it had only followed HD's instruction to close his account and change the consumer name to HD. However, HD denied issuing such instruction. The complainant considered the mistake to be the result of the poor administration of the two departments. Moreover, they had both shirked their responsibility.

Negligence of Both Departments

2. On referral by this Office, HD investigated and found that when notifying WSD to close a water account, HD staff had given the wrong address. On the other hand, WSD staff had failed to check the information and terminated the complainant's account by mistake. In short, the staff concerned in both departments had been negligent.

Advice to Staff

3. This Office urged the two departments to advise their staff to be careful in carrying out their duties.

LEISURE AND CULTURAL SERVICES DEPARTMENT ("LCSD")

Case No. OMB 2005/2863

Public swimming pool – poor staff attitude and failure to follow up complaints promptly

The complainant alleged that when she took her 12-year-old daughter to a public swimming pool under LCSD, the staff showed poor attitude and embarrassed her daughter by repeatedly questioning her age. As a result, her daughter was afraid to go again. When the complainant complained by telephone, the officer-in-charge of the swimming pool refused to talk to her face-to-face and just undertook to urge staff to improve their attitude. The complainant later lodged her complaint with LCSD headquarters but there was no follow-up action.

2. As the case involved no grave maladministration, this Office suggested resolving the matter by mediation. Both parties agreed.

Mutual Communication

3. At the mediation meeting, the complainant reiterated her case, recounting the effect on her daughter and her views on LCSD's regulations on the admission of children and students to public swimming pools.

4. In response, LCSD representatives apologised to her, explaining that the staff in question were service contractor's for security duties at the entrance of the swimming pool. They had been verbally warned after the incident and redeployed to other venues. LCSD representatives also explained that the officer-in-charge of the swimming pool could not talk to her face-to-face because she was dealing with an urgent task at the time.

5. Nevertheless, the Department had advised the officer to be more flexible in handling complaints. As regards following up her complaints, the representatives said that a reply had been given to her within the stipulated performance pledge. They admitted, however, that there was room for improvement. The Department had, therefore, reminded staff to speed up the processing of complaints for early reply.

Agreement Reached

6. After a candid exchange of views, the two parties reached agreement. LCSD undertook to give the complainant a written explanation and an apology whilst the complainant agreed not to pursue the matter further.

STUDENT FINANCIAL ASSISTANCE AGENCY ("SFAA")

Case No. OMB 2005/1441

Application for financial assistance – failing to process an application fairly

The complainants were a mother and her daughter. The latter, a post-secondary student, had applied to SFAA for financial assistance for 2004/05. The complainants alleged that the SFAA officer who interviewed them was biased and repeatedly requested them to clarify their bank records. Eventually, only a non-means tested loan was granted. They considered SFAA to have failed to process the application fairly.

2. As the case involved no grave maladministration, this Office suggested resolving the matter by mediation. Both parties agreed.

Explanations by Both Sides

3. At the mediation meeting, SFAA representatives explained the normal procedures and general policies in processing applications, as well as the need to examine financial information such as bank statements. Meanwhile, the mother explained the state of her marriage.

4. As regards the complainants' allegation that the SFAA officer concerned had been unduly critical in processing the application, SFAA representatives explained that the officer was just following established procedures and assessment criteria. The complainants accepted the explanation.

Achievement of Agreement

5. After a candid exchange, agreement was reached. The mother promised to provide the necessary documents for SFAA consideration and SFAA representatives agreed to reassess the application upon receipt of the information.

STUDENT FINANCIAL ASSISTANCE AGENCY ("SFAA")

Case No. OMB 2005/2662

Loan application – unfair treatment

The complainant applied to SFAA for non-means tested loan. Allegedly, SFAA had previously issued loan cheques in foreign currency to other applicants but refused to do so for her.

2. As the case involved no grave maladministration, this Office suggested resolving the matter by mediation. Both parties agreed. For early resolution, mediation was conducted by telephone as the complainant had to meet the deadline for payment of fees.

SFAA's Practice

3. SFAA explained that according to the guidance notes for application, the loans were valued in Hong Kong dollars. If the course pursued by an applicant accepted payment of tuition fees only in foreign currency, the applicant should pay first and then apply for a loan in Hong Kong dollars. If the applicant had special reasons with supporting documents, SFAA might consider issuing a cheque in foreign currency. Such arrangement, however, would be considered on the merits of individual cases.

Agreement Reached

4. SFAA suggested that there might have been some misunderstanding between the complainant and the staff as she thought that her application had been rejected. Upon receipt of her supplementary information, SFAA had exercised discretion in processing the application and issued her a cheque in foreign currency. The complainant was satisfied. She hoped that SFAA would review the existing mechanism and process loan applications more flexibly.

TRADE AND INDUSTRY DEPARTMENT ("TID")

Case No. OMB 2005/2079

Processing of application – failing to handle an application properly and delaying the payment of grant

The Complaint

The complainant complained against TID for not having properly handled her company's application for a grant from the Small and Medium Enterprises Export Marketing Fund. The application had been approved, but the grant had not been made on schedule. There was also a mistake in the name of payee on the cheque subsequently issued by the Department. Furthermore, the staff failed to explain clearly when answering her telephone enquiries about the processing of her application.

Resolution by Mediation

2. As the case did not involve serious maladministration, this Office suggested resolving the matter by mediation. Both parties agreed.

3. At the mediation meeting, TID representatives explained their processing of the application and the cause of the error in the cheque issued. They apologised to the complainant for the inconvenience caused and presented a replacement cheque to her.

4. TID also undertook to:

(a) remind staff to check the data of each application with care and to answer public enquiries in detail; and

(b) improve the application procedures and shorten the time required for payment of grants.

Annex 11

Index of Cases Concluded by Full Investigation

(Cases with * have recommendation(s) in the investigation reports.)

Agriculture, Fisheries and Conservation Department

2004/4681	Impropriety in handling an application for a temporary exhibition permit and poor staff manners	Unsubstantiated*

Architectural Service Department

2004/0343	(a) Delay in replying to the complainant's enquiries; and (b) Failing to properly monitor the project site condition	Unsubstantiated

Buildings Department

2004/1386	Impropriety in approving an application for installing a mobile telephone base station and failure to handle a complaint in that regard	Unsubstantiated
2004/2234	Failing to enforce a planning approval condition of Town Planning Board	Substantiated*
2005/0986	Failing to monitor the site formation works of a small house	Unsubstantiated

Civil Engineering and Development Department

2005/1633	Ignoring local residents' objection to opening a new road and traffic diversion arrangements	Unsubstantiated

Environmental Protection Department

2005/2931	Lack of response to a complaint about excessive noise from fish boats at a typhoon shelter	Unsubstantiated

Index of Cases Concluded by Full Investigation

Food and Environmental Hygiene Department

2004/0411	(a) Delay in handling a complaint about unauthorised demolition of a partition wall between two adjacent market stalls; (b) Allowing the two stall owners to rebuild the demolished partition wall with materials different from specified requirements; and (c) Selective enforcement action against unauthorised stall extensions	Partially substantiated*
2004/3685	(a) Staff entering private property without authority; and (b) Delay in handling a complaint in that regard	Partially substantiated*
2005/0265	Impropriety in handling an application for transfer of restaurant licence and failure to follow up a report against an unlicensed restaurant	Partially substantiated*
2005/2124	Failing to give prior notice of exhumation of remains to the deceased's family	Partially substantiated*

Government Secretariat – Economic Development and Labour Bureau

2004/0344	(a) Failing to consult the public on a major public art project; (b) Delay in replying to the complainant's enquiries; and (c) Failing to properly monitor the project site condition	Partially substantiated*
2004/3087	(a) Inadequate consultation with local residents over two works projects; (b) Failure to take into consideration the needs of local residents in relocating leisure facilities; (c) Inaccessibility of membership of advisory bodies to ordinary residents and lack of information on how to to join; and (d) "Jump-starting" a public transport interchange relocation project before funding approval and inappropriately involving the Tourism commission in the project	Unsubstantiated
2005/2932	Lack of response to a complaint about excessive noise from fish boats at a typhoon shelter	Partially substantiated

Index of Cases Concluded by Full Investigation

Government Secretariat – Environment, Transport and Works Bureau

2005/1425	Failing to monitor KCRC properly and to handle complaints positively	Unsubstantiated

Government Secretariat – Home Affairs Bureau

2004/3083	(a) Inadequate consultation with local residents over two works projects; (b) Failure to take into consideration the needs of local residents in relocating leisure facilities; (c) Inaccessibility of membership of advisory bodies to ordinary residents and lack of information on how to apply to join; and (d) "Jump-starting" a public transport interchange relocation project before funding approval and inappropriately involving the Tourism Commission in the project	Unsubstantiated

Government Secretariat – Housing Planning and Lands Bureau

2004/2719	Failing to ensure enforcement of a planning approval condition of Town Planning Board	Partially substantiated

Highways Department

2004/3085	(a) Inadequate consultation with local residents over two works projects; (b) Failure to take into consideration the needs of local residents in relocating leisure facilities; (c) Inaccessibility of membership of advisory bodies to ordinary residents and lack of information on how to apply to join; and (d) "Jump-starting" a public transport interchange relocation project before funding approval and inappropriately involving the Tourism Commission in the project	Unsubstantiated

Index of Cases Concluded by Full Investigation

Home Affairs Department

2004/3084	(a) Inadequate consultation with local residents over two works projects; (b) Failure to take into consideration the needs of local residents in relocating leisure facilities; (c) Inaccessibility of membership of advisory bodies to ordinary residents and lack of information on how to apply to join; and (d) "Jump-starting" a public transport interchange relocation project before funding approval and inappropriately involving the Tourism Commission in the project	Unsubstantiated
2004/3887	Delay in handling water seepage problem on a retaining wall	Unsubstantiated
2005/1535	Failing to assist local residents in securing better pedestrian facility	Unsubstantiated
2005/3437	Failing to arrange consultation with local residents in respect of opening a new road and traffic diversion arrangements	Unsubstantiated

Hospital Authority

2004/2867	Mishandling the complainant's request for medical treatment	Partially substantiated*

Housing Department

2005/1041	Shirking responsibility and delay in handling an unauthorized structure	Substantiated*

Immigration Department

2005/1487	Wrongfully granting the complainant a limit of stay in Hong Kong according to an old Multiple Entry Endorsement, resulting in her subsequent arrest by police for over-staying	Unsubstantiated

Index of Cases Concluded by Full Investigation

Kowloon-Canton Railway Corporation

2004/3082	(a) Inadequate consultation with local residents over two works projects; (b) Failure to take into consideration the needs of local residents in relocating leisure facilities; (c) Inaccessibility of membership of advisory bodies to ordinary residents and lack of information on how to apply to join; and (d) "Jump-starting" a public transport interchange relocation project before funding approval and inappropriately involving the Tourism Commission in the project	Unsubstantiated
2005/1426	Failing to take into consideration a request by local residents for better pedestrian facility	Unsubstantiated

Lands Department

2004/2716	Failing to enforce a planning approval condition of Town Planning Board	Unsubstantiated
2004/4362	Delay in handling water seepage problem on a retaining wall	Substantiated*
2005/0161	(a) Allowing a neighbouring house to encroach upon the complainant's private land; and (b) Delay in answering her enquiry on her application to build a small house	Partially substantiated
2005/0985	Failing to monitor the development of a small house and inclusion of a misleading condition in certificates of exemption in respect of building works of small houses	Partially substantiated*
2005/0991	Failing to investigate and rectify an excavation work in a village, which resulted in the blockage of a drainage channel next to the complainant's house	Partially substantiated*
2005/1043	Shirking responsibility and delay in handling an unauthorized structure	Substantiated*
2005/1395	Failing to take enforcement action against an illegal structure	Substantiated*

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Legal Aid Department

2005/0227	Delay in handling the complainant's two claims and failure to inform him of the progress of his claims between October 2000 and October 2004	Substantiated*

Marine Department

2005/2410	Lack of response to a complaint about excessive noise from fish boats at a typhoon shelter	Partially substantiated

Office of the Telecommunications Authority

2004/1387	Impropriety in approving an application for installing a mobile telephone base station and failure to handle a complaint in that regard	Partially substantiated*

Planning Department

2004/2717	Failing to enforce a planning approval condition of Town Planning Board	Unsubstantiated
2005/1909	Shirking responsibility and delay in handling an unauthorised structure	Unsubstantiated

Social Welfare Department

2004/4489	Delay in processing an application for disability allowance by the complainant's wife	Substantiated*
2004/4737	Failing to monitor the services of a residential care home for the elderly, which resulted in the death of the complainant's grandfather, and refusing to launch a full investigation into the matter	Unsubstantiated*
2005/0388	(a) Lack of transparency and defective mechanism in the allocation procedures for placement in Special Child Care Centres; and (b) Staff failure to follow up properly the complainant's enquiries	Unsubstantiated

Index of Cases Concluded by Full Investigation

Transport Department

2004/2718	Failing to enforce a planning approval condition of Town Planning Board	Unsubstantiated
2004/3086	(a) Inadequate consultation with local residents over two works projects; (b) Failure to take into consideration the needs of local residents in relocating leisure facilities; (c) Inaccessibility of membership of advisory bodies to ordinary residents and lack of information on how to apply to join; and (d) "Jump-starting" a public transport interchange relocation project before funding approval and inappropriately involving the Tourism Commission in the project	Unsubstantiated
2005/1634	Ignoring local residents' objection to opening a new road and traffic diversion arrangements	Unsubstantiated

Water Supplies Department

2005/1529	Poor customer hotline service	Substantiated*
2005/1556	(a) Poor customer hotline service; and (b) Delay in refunding deposit	Substantiated*
2005/1635 2005/1650 2005/1666 2005/1775	Poor customer hotline service	Substantiated*
2005/1853	(a) Poor customer hotline service (b) Delay in replying to enquiries	Partially substantiated*
2005/2453	Failing to investigate and rectify an excavation work in a village, which resulted in the blockage of a drainage channel next to the complainant's house	Unsubstantiated

AGRICULTURE, FISHERIES AND CONSERVATION DEPARTMENT ("AFCD")

Case No. OMB 2004/4681

Exhibition permit — (a) delay in issuing a Temporary Exhibition Permit; and (b) poor staff manners and abuse of power — unsubstantiated

A representative of a cat club complained against AFCD for impropriety in handling its application for a Temporary Exhibition Permit.

What Went Wrong

2. While organising an exhibition of cats, the complainant received a call from the sponsor that an AFCD officer had alleged the club to have failed to obtain a permit for the event. The complainant called the officer to clarify but found his telephone manners hostile. The officer also failed to explain why he had contacted the sponsor instead of the club, thereby jeopardising the club's relationship with the sponsor.

3. Eventually, the club applied for a permit. The complainant claimed that AFCD had indicated it would normally take three to four days to issue a permit. However, in this case, it took more than ten days, with the permit issued just one day before the event. Allegedly, this was due to its seeking legal advice on the need for a permit.

4. The complainant considered that a permit was not necessary and claimed that some AFCD officer also shared this view. In any case, AFCD's seeking legal advice from the Department of Justice ("D of J") reflected its incompetence because AFCD itself was the authority for such matters. The complainant also alleged that an AFCD officer had shown up without authority on the day of the event and made a scene there.

Officers' Duty

5. Any person organising an exhibition of animals or birds for a period not exceeding a month and admitting members of the public on payment is statutorily required to apply for a temporary permit from AFCD. On 19 November 2004, AFCD received a complaint that the exhibition, to be held on 4 December, did not have the required permit.

6. AFCD had a duty to investigate whether the exhibition required a permit. Given the time constraint and the effort in vain to contact the complainant, we considered it reasonable for the Department to contact the sponsor, who was named in the event leaflet attached to that complaint. We believed that AFCD had no intention to jeopardise the complainant's relationship with the sponsor. In fact, AFCD had apologised to the complainant and offered to write to the sponsor to clarify. However, the complainant did not respond to the offer.

7. As regards the AFCD officer's telephone manners, we could not comment in the absence of independent corroborative evidence.

8. D of J is Government's legal adviser. It was proper for AFCD to seek its advice on legal matters including interpretation of the law. We noted that once the legal advice was available, a permit was issued within two days. There was no evidence of delay in processing the application.

9. We considered it normal practice for AFCD staff to inspect events issued with a permit, to ensure compliance with conditions. There was no abuse of power.

10. Overall, the complaint was unsubstantiated.

Recommendations for Improvement

11. Despite our conclusion in this case, our scrutiny of AFCD files had revealed inadequacies in its record maintenance and permit inspection system. AFCD accepted the following recommendations by The Ombudsman:

(a) to remind officers of the need for keeping proper records;

(b) to establish a system for file audit by random checks to ensure that records are properly maintained;

(c) to establish guidelines on procedures for inspections and completion of inspection reports; and

(d) to incorporate as a permit condition that exhibitions are subject to inspection by AFCD officers.

CIVIL ENGINEERING AND DEVELOPMENT DEPARTMENT ("CEDD"), TRANSPORT DEPARTMENT ("TD") AND HOME AFFAIRS DEPARTMENT ("HAD")

Case No. OMB 2005/1633-1634; OMB2005/3437

CEDD — traffic arrangements — ignoring residents' objection to opening a new road and traffic diversion arrangements — unsubstantiated

TD — traffic arrangements — same — unsubstantiated

HAD — public consultation — failing to arrange consultation with residents — unsubstantiated

The Complaint

The owners' committee of a housing estate ("Estate A") alleged that CEDD, TD and a District Office ("DO") under HAD had failed to consult its residents on the opening of a new road and the related traffic diversion arrangements and implemented all these despite their objection. The committee was worried that these measures, including the banning of heavy vehicles from a private road in another estate ("Estate B") would result in such vehicles congesting the roads outside Estate A.

CEDD's Planning and Consultation

2. The new road was part of a project to alleviate a flooding problem in the New Territories. The former Territory Development Department as ("TDD") (now merged with the former Civil Engineering Department as "CEDD") was responsible for project planning.

3. In 1993, TDD sought the views of the then District Board. The project was gazetted in 1994 and 1997. After the latter gazettal, the developer of Estate B raised concern that the opening of the new road would attract more heavy vehicles to use its private road resulting in its bearing higher maintenance cost. The developer, therefore, requested Government to erect appropriate traffic signs to keep heavy vehicles off its private road.

4. TDD consulted the District Council in February 1998. The Council agreed that such signs be erected at the junction of the new road and the private road and adjacent roundabouts to divert traffic.

5. In addition, TDD sought the views of the Chairman and Vice-chairman of the Rural Committee and the Chairman of the owners' association of Estate B. As they were all District Councillors representing the area, including Estate A, this Office considered TDD to have conducted adequate consultation on the new road and the above traffic diversion. The complaint against TDD (now CEDD) was, therefore, unsubstantiated.

TD's Consultation and Implementation

6. TD was responsible for implementing the agreed traffic arrangements upon completion of the road works.

7. In 2003, when the road works neared completion, the District Councillor for Estate B requested TD to erect traffic signs at the private road. TD then asked the District Councillor and DO to consult the residents and shop tenants in the area.

8. In 2004, TD, CEDD and other departments concerned attended a meeting of the liaison group of housing estates in the area, arranged by DO for consulting residents on the opening of the new road. Representatives of Estate B pressed for erection of the traffic signs but cargo forwarding operators and representatives of other estates including Estate A considered the consultation inadequate. They were worried about possibly serious congestion upon traffic diversion.

9. In view of such divergent views, TD, CEDD and other departments concerned held five inter-departmental meetings in 2005 on the issue. TD also attended meetings of the liaison group and residents of Estate B to gather the views of different parties. Finally, TD wrote to the District Councillor representing Estate B and the liaison group with proposals for short-term and long-term traffic diversion arrangements in 2005 and 2006 by phases. Vehicles exceeding seven metres would be banned from the private road in Estate B and diverted to the new road.

10. As TD had actively reviewed the situation with CEDD and adjusted its arrangements in response to public views, this Office considered the complaint against TD unsubstantiated.

HAD's Consultation Arrangements

11. In 1997, DO assisted the departments concerned in discussions on the traffic arrangements with District Councillors and the Rural Committee's Chairman and Vice-chairman. In 1998, it assisted those departments in putting the proposed traffic arrangements to the District Council. Between 2003 and 2005, DO arranged for the departments to meet with residents and attended inter-departmental meetings to reflect their views. We, therefore, considered HAD to have fulfilled its coordination role. The complaint against it was, therefore, unsubstantiated.

Conclusion

12. Overall, the complaint was unsubstantiated.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2004/3685

Complaint handling — (a) unauthorised entry into a village house and theft by FEHD officer; and (b) delay in processing a complaint — partially substantiated

The complainant alleged that an FEHD officer had entered his village house without prior notice and stolen his property. Moreover, the supervisor of the officer concerned had delayed processing his complaint about the incident.

Reports of Nuisance against Complainant's Premises

2. In August 2004, FEHD received seven reports on the revolting hygiene condition and odour caused by decaying meat, dead fish, dead shrimps and rubbish in the complainant's village house. The FEHD officer investigating the case could not gain access into the village house. So he looked into the complainant's backyard by mounting a ladder in an adjacent house. On confirming the insanitary condition, he posted a notice on the front gate requesting the complainant to contact the Department.

3. The complainant did not respond and his house remained locked up on subsequent visits by FEHD. The Department, therefore, decided to invoke the law to enter the premises to see if the house was used for illegal food processing and to clear the rubbish, recovering the cost from the occupier later.

4. The FEHD officer and cleaners finally gained access into the complainant's backyard by climbing over the wall from adjacent premises and removed a decaying pig's head, a box full of maggots, dead shrimps, a bucket with foul matter, a worn-out aluminium ladder, a metal stool, a handcart and smelly ragged clothes. They took these items in three refuse containers to a refuse depot for disposal. Two neighbours witnessed the operation.

Allegation of Unauthorised Entry

5. Later, the complainant alleged that FEHD staff had entered his village house without authorisation. He claimed that the articles cleared were elements of his *fung shui* "shrine" and there was a jade pendant in the pig's mouth. He, therefore, sought compensation from the Department for his lost property. He also indicated that he had reported to the Police as a case of unauthorised entry and theft. After investigation, the Police found insufficient evidence to support a charge and closed the case.

6. FEHD subsequently charged the complainant for failing to remove household waste from his premises at least once every 24 hours as required under the Public Cleansing and Prevention of Nuisances Regulation. The complainant was found guilty and fined.

No Service of Statutory Notice

7. The posting of a non-statutory notice on the front gate of the complainant's house did not serve any purpose because he had not been back. This Office considered that the FEHD officer should have posted a statutory Notice of Intended Entry. Such Notice, to be issued not less than two hours before intended entry, empowers public officers to enter any premises between 7 am and 7 pm to perform their duties in relation to public hygiene legislation. If the occupier is temporarily away or the case is an urgent one, a warrant was necessary for entry.

8. The FEHD officer had neither posted a statutory notice nor applied for a warrant for entry before entering the complainant's house to clear the articles. This Office considered complaint (a) partially substantiated.

No Delay in Complaint Handling

9. Upon receipt of the complaint on 30 August, the supervisor of the FEHD officer immediately referred it to the Complaints Management Section ("CMS") for investigation and issued an interim reply to the complainant on 4 September. Therefore, CMS gave monthly interim replies to the complainant. There was no delay in processing the complaint. Complaint (b) was, therefore, unsubstantiated.

Conclusion and Recommendations

10. Overall, the complaint was partially substantiated.

11. FEHD accepted the following recommendations made by The Ombudsman:

(a) to formulate clear working guidelines to assist frontline staff in performing their duties;

(b) to remind staff to handle urgent cases of serious nuisance to public hygiene promptly and decisively;

(c) to establish a monitoring system to ensure that frontline staff submit inspection reports to their supervisors expeditiously; and

(d) to consider amendments to the Public Health and Municipal Services Ordinance so as to deter people from purposely causing nuisance to environmental hygiene.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2005/0265

Licence transfer and enforcement — (a) failing to verify the complainant's ownership, or right to the use, of the food premises before approving his application for licence transfer; and (b) failing to act on the complainant's report against an unlicensed restaurant — partially substantiated

The complainant purchased the equipment of a restaurant and obtained FEHD approval for transfer of the restaurant licence. However, as the owner refused to rent the premises to the complainant, he could not conduct business. FEHD warned that if the restaurant could not resume business within six months, the licence would be cancelled. The complainant later discovered that someone had been using the said premises for an unlicensed restaurant. He reported the case to FEHD several times, but the Department did not take any enforcement action.

Transfer of Restaurant Licence

2. Under FEHD procedural guidelines, transfer of licence would be approved when there was no record of demerit points registered against the food premises within the past 12 months or written warning issued due to violation of licensing requirements and conditions within the past six months prior to the date of application.

3. This Office considered it the complainant's responsibility to ensure that he had ownership, or right to the use, of the premises before applying for licence transfer. FEHD had acted according to the relevant legislation and existing policy. There was no dereliction of duty. Complaint (a) was, therefore, unsubstantiated.

No Enforcement Action

4. FEHD considered itself to have taken appropriate action in response to the complaint. However, this Office considered that the Department had all along focused evidence collection only on whether the complainant was operating his business at the said premises and whether his licence should be cancelled, instead of ascertaining whether there was any unlicensed operation. In fact, FEHD had confirmed the existence of the unlicensed restaurant but it did not take any action.

5. This Office considered that FEHD had failed to respond appropriately to the complainant's report against the unlicensed restaurant. Complaint (b) was, therefore, substantiated.

6. Overall, the complaint was partially substantiated.

Recommendations

7. FEHD accepted our recommendations to conduct a review on the operation of a licensed premises by a person other than the licensee and to issue appropriate guidelines for handling such situation.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT (FEHD)

Case No. OMB 2005/2124

Exhumation of remains — (a) failing to notify family before exhumation; and (b) shirking of responsibility by staff — partially substantiated

The complainant's late husband was buried in a cemetery ("Cemetery A") under FEHD in 1996. In April 2005, she contacted two different offices ("Office B and Office C") of FEHD's Cemeteries and Crematoria Section to enquire about exhuming the remains. The staff at both offices allegedly informed her that the remains were still in Cemetery A.

2. An undertaker went to Cemetery A to exhume the remains, only to find that they were not there. FEHD later confirmed that it had exhumed the remains in January 2005. Before doing so, it had sent a written notification to the family of the deceased. However, the complainant claimed not to have received such notification. She was also dissatisfied that the staff at Office B and Office C shirked their responsibility and refused to admit their mistakes.

Exhumation of Remains

3. The law stipulated that human remains must be exhumed within seven years after burial or FEHD would have them removed and properly disposed of. In May and June 2003, FEHD published respectively a notice and an order in the Gazette and several newspapers, indicating that all human remains buried in 1996 in some specified cemeteries would be removed and disposed of if private exhumation was not arranged by 30 June 2003. Eventually, the Department removed the remains not yet exhumed (those of the complainant's husband included) from the graves in January 2005. Before that, FEHD had sent a notification to the complainant's elder brother (the applicant for burial in 1996).

Notification to Wrong Address

4. Upon receipt of this complaint, FEHD checked its file records and discovered that the staff at the time had used a wrong address on the envelope. The notification to the brother was thus returned.

Outdated Information

5. Furthermore, according to established procedures, FEHD would cremate the remains still not collected six months after exhumation. So it was only after cremation that relevant information such as dates of exhumation and cremation as well as the whereabouts of the ashes would be entered into the computer. When the complainant contacted Office B in April 2005, the data had yet to be updated. Accordingly, the staff told her that the remains were still in Cemetery A and, as the date of burial had expired, she had to contact Office C as soon as possible for exhumation.

No Confirmation

6. The three staff members at Office C overlooked that the year of burial was 1996. Consequently, they did not confirm with Cemetery A whether the remains had been exhumed before issuing the complainant an exhumation permit.

7. FEHD admitted impropriety and negligence by its staff. It had written the complainant to apologise and arranged for refund of the fee for the exhumation permit. Moreover, FEHD had also improved its arrangements for sending out notification and undertook to upgrade its computer system so as to notify permit-issuing offices of any imminent large-scale exhumations.

Our Observations and Opinions

8. FEHD did publish a notice and an order and had sent a notification to the brother of the complainant before proceeding with the exhumation. Unfortunately, the notification never reached the brother because of wrong address. The staff concerned should be held accountable for negligence. Complaint (a) was, therefore, partially substantiated.

9. The staff at Office B replied to the complainant's enquiry based on information in the computer. The notification system in FEHD, not the staff concerned, was to blame for the blunder. The three staff members at Office C, albeit very busy, were still derelict in mistakenly issuing an exhumation permit to the complainant. In view of their readiness to admit their fault, complaint (b) was unsubstantiated.

Final Remarks

10. Overall, this complaint was partially substantiated.

11. FEHD accepted The Ombudsman's recommendations to revise its internal guidelines and to upgrade its computer reporting system. The Department also reimbursed the complainant the cost incurred in hiring an undertaker for the exhumation.

HOME AFFAIRS DEPARTMENT ("HAD") AND LANDS DEPARTMENT ("Lands D")

Case Nos. OMB 2004/3887; OMB 2004/4362

HAD — complaint handling — delay in handling water seepage problem on a retaining wall — unsubstantiated

Lands D — same — substantiated

The Complaint

The complainant alleged that a District Office ("DO") under HAD and a District Lands Office ("DLO") under Lands D had delayed handling a problem of water seepage on a retaining wall behind his house.

HAD Fulfilling Its Role

2. DO had confirmed the seepage after a site inspection and asked DLO to check the ownership of the retaining wall and the party responsible for maintenance. It had also sought assistance from other departments.

3. As the cause of seepage had not been identified and DLO had not replied, DO contacted the other departments concerned for a site inspection with the complainant. The departments agreed that DLO should ascertain the party responsible for maintenance. Unable to find any registration records of the retaining wall, DLO proposed that DO arrange repair under the Rural Public Works Programme ("RPWP") to resolve the problem.

4. Since the retaining wall was on unleased Government land, DO asked DLO whether it was an unauthorised structure to be demolished. DLO was uncertain and considered demolition not practicable. It suggested again that DO arrange repair under RPWP. As that was outside the scope of RPWP, DO insisted that the party responsible for maintenance be identified.

5. This Office considered that DO had actively followed up the complaint and fulfilled its coordination role. The complaint against HAD was, therefore, unsubstantiated.

Lands D Procrastinating and Shirking Responsibility

6. DLO had, however, been lax in pursuing the case. In fact, it did not take any action until the joint site inspection arranged by DO. Even then, DLO could not find any registration records of the retaining wall, but just asked DO to arrange repair under RPWP.

7. It was only when this Office started inquiry that Lands D confirmed the retaining wall to be on Government land and advanced the "beneficiary-maintains" principle in accordance with a Technical Circular issued by the former Works Bureau. This meant that if the retaining wall was later found to be dangerous, the owner or beneficiary of that wall should be responsible for maintenance.

8. In this connection, our Office noted that the Technical Circular was just an internal document not officially published for general information. Its legal basis for the "beneficiary-maintains" principle was also not explained. The complaint against Lands D was, therefore, substantiated.

Conclusion and Recommendations

9. Overall, this case was partially substantiated.

10. The Ombudsman urged Lands D to:

(a) instruct staff to be more proactive in handling complaints; and

(b) settle any disputes over the maintenance responsibility for the retaining wall as soon as possible to prevent any accident from lack of maintenance.

HOUSING DEPARTMENT ("HD"), LANDS DEPARTMENT ("Lands D") AND PLANNING DEPARTMENT ("Plan D")

Case Nos. OMB 2005/1041; OMB 2005/1043;

OMB 2005/1909

HD and Lands D — enforcement action — shirking responsibility and delaying action against unauthorised structure — substantiated

Plan D – same – unsubstantiated

The Complainants complained against HD, Lands D and Plan D for "buck-passing" over their complaint of an unauthorised structure on an adjacent lot as it posed a security risk to their estate.

Little Action in Two Years

2. The Complainants wrote to Plan D and a District Lands Office of Lands D for action on the unauthorised structure. Both departments notified HD as it was responsible for demolition of unauthorised structures on leased land.

3. According to the planning permission granted by the Town Planning Board ("TPB"), part of the subject lot could be used for operating a temporary hardware shop. Under the Outline Zoning Plan, the unauthorised structure did not constitute "unauthorised development", but the storage of construction materials there was a violation. For that offence, Plan D exercised control and issued warnings under the Town Planning Ordinance ("TPO").

4. However, the case of the unauthorised structure dragged on for nearly two years, as HD and Lands D refrained from any action and waited for the owner/occupier of the lot to apply to TPB for change of land use or to Lands D for Short Term Waiver ("STW") for regularisation.

HD Delay

5. HD explained that the owner/occupier of the lot had thrice applied to TPB for change of land use and twice asked for review of the applications. Besides, Lands D had also indicated that it would consider granting a STW. HD, therefore, did not issue any notice of a deadline for demolition. HD claimed that it had to wait for the final decisions of TPB and Lands D on those applications before taking action.

6. This Office did not accept HD's explanation. There were at least two long periods when the owner/occupier did not seek change of land use or STW. HD had no reason to keep the case pending. The complaint against HD was, therefore, substantiated.

Lands D Procrastination

7. Lands D argued that it was normal practice to notify HD to demolish any new unauthorised structure on private lots that could not be regularised by STW. Plan D could also prosecute for any "unauthorised development" under the TPO. Lands D considered its lease enforcement not as direct or effective as action by the other departments. Lands D had, therefore, referred the case to HD and Plan D for action. Meanwhile, it had included the case in its "Priority List for Lease Enforcement Action", which meant that action might be taken in "three to five years".

8. This Office considered that during the two periods mentioned in paragraph 6 above, Lands D could well have taken action. Inclusion of the case in its "Priority List" was a pretext for procrastination. The complaint against Lands D was, therefore, substantiated.

Plan D Action

9. Plan D had no statutory authority to take action on the unauthorised structure but it had warned the occupier and stopped the storage of construction materials. The complaint against Plan D was, therefore, unsubstantiated.

Conclusion and Recommendations

10. Overall, the complaint was partially substantiated.

11. The Ombudsman recommended that HD and Lands D (with Plan D as necessary):

(a) actively deliberate and take steps to speed up action on unauthorised structures, instead of finding excuses and relying on other departments for action; and

(b) on (a) above, review and suitably revise their departmental guidelines.

IMMIGRATION DEPARTMENT ("Imm D")

Case No. OMB 2005/1487

Checking of visa — mistakenly imposing a limit of stay on the complainant according to her old visa endorsement — unsubstantiated

The Event

The complainant, a frequent visitor to Hong Kong, came again at the end of March 2005. Officer A of Imm D imposed a limit of stay until 20 April on the strength of a "Multiple Entry/Exit Endorsement" ("Endorsement") issued by her place of origin in early January 2005 in her travel document.

2. In mid-May 2005, a police officer noted that she had overstayed, arrested her and handed her over to the Clearance Section of Imm D. Staff of the Section then discovered in her travel document a second and more recent Endorsement issued at the end of March. This meant that she could have been allowed to stay until the end of June. The complainant was thus released.

Two Endorsements

3. Imm D informed this Office that this was a first ever incident. Under normal circumstances, her place of origin would not issue to anyone two Endorsements with overlapping validity. As The Ombudsman has no authority to investigate matters outside Hong Kong, we could not tell how the complainant had come to possess two such Endorsements.

Imm D's Comments

4. Imm D determines a visitor's limit of stay based on the Endorsement in his/her travel document. An "Important Notice to Visitors" ("Notice") is given to alert the visitor to the limit as well as other conditions of stay.

5. In this case, Officer A had checked the complainant's travel document, found a valid Endorsement (i.e. the "old" Endorsement) and accordingly allowed her to stay until 20 April 2005. He had also given her a copy of the Notice.

6. Imm D considered that Officer A had handled the complainant's entry into Hong Kong according to the general requirements of the arrival procedures.

Complainant's Responsibility

7. This Office considered that Officer A had not made a mistake by not looking for another Endorsement in the complainant's travel document, as visitors were not supposed to have two concurrent Endorsements. The incident occurred simply because the complainant had somehow managed to obtain a second Endorsement while the first one was still valid. As a frequent visitor to Hong Kong, she should have been familiar with the regulations on limit of stay. However, she had not alerted Officer A to the second Endorsement and did not read the Notice or check her limit of stay carefully. She herself was, therefore, partly responsible for the incident.

Conclusion

8. In this light, The Ombudsman considered this complaint unsubstantiated.

KOWLOON-CANTON RAILWAY CORPORATION ("KCRC"), ENVIRONMENT, TRANSPORT AND WORKS BUREAU ("ETWB") AND HOME AFFAIRS DEPARTMENT ("HAD")

Case Nos. OMB 2005/1425-1426; OMB 2005/1535

KCRC — pedestrian facility — failing to take into consideration local residents' needs, thus causing them inconvenience — unsubstantiated

ETWB — same — failing to monitor KCRC properly and to handle complaints positively — unsubstantiated

HAD — same — failing to assist in securing better pedestrian facility — unsubstantiated

The Complaint

The complainant alleged that in constructing a West Rail station, KCRC had replaced a covered pedestrian walkway with an open one, causing inconvenience to local residents. She maintained that KCRC had agreed to coverover the new walkway ("Option A") but did not honour its promise. Instead, it proposed another option, to construct a covered walkway across the podium garden above the station with access to the ground by elevator ("Option B") but this would be less convenient.

2. The complainant had requested ETWB and HAD many times to follow up her complaint but to no avail. She considered that they had not positively assisted her.

Consultation Adequate

3. Our investigation found that residents had been duly consulted on the matter. Both Options A and B had been proposed by the Owners' Corporation ("OC") of the complainant's residence or local District Councillors. The options had been discussed at District Council meetings, with representatives from KCRC and the departments concerned in attendance.

4. Two questionnaire surveys had also been conducted by the OC. The outcome was that most residents supported Option B. It was thus reasonable for KCRC to adopt it.

Monitoring Not an Issue

5. This Office considered that the provision of ancillary facilities for individual train stations should be the responsibility of KCRC. ETWB's duty was to monitor KCRC operation and services with reference to the relevant transport policy. This case did not involve transport policy, so it was appropriate for ETWB not to intervene when KCRC's decision was justified.

6. As regards the handling of complaints, ETWB had given response to all the complainant's letters.

Communication Facilitated

7. We noted that although HAD had no authority over any of the decisions, it had throughout facilitated communication among the parties concerned. It had, therefore, properly performed its liaison role.

Conclusion

8. The Ombudsman found no maladministration in this case. The complaint was, therefore, unsubstantiated.

LANDS DEPARTMENT ("Lands D")

Case No. OMB 2005/0161

Land matters — (a) delay in answering an enquiry on an application to build a house; and (b) allowing the balconies of a neighbouring house to protrude into her land — partially substantiated

The Complaint

The complainant had purchased a private lot in the New Territories. She applied to the local District Lands Office ("DLO") of Lands D to build a house there, but her application was rejected. She then asked DLO for the reason. However, allegedly the latter did not give her a timely reply. She further complained that DLO had allowed the balconies of a neighbouring house to protrude into her lot.

No Delay in Replying

2. We learned that the complainant had gone to DLO in person to make the enquiry. DLO staff answered her right away and the complainant agreed that no written reply was necessary. This Office, therefore, considered that the staff had not delayed replying to her enquiries and there was no maladministration.

Encroachment Substantiated

3. Lands D confirmed that the balconies in question protruded into the adjacent Government land and the complainant's lot. However, when the house under complaint was built, the complainant did not yet own the lot. The then land owner was in fact also the Authorised Person for construction of the house. He had confirmed in writing to the then District Office, certifying that the construction of the house complied with all the specified requirements and he had also applied for a Certificate of Compliance.

4. In response to the house owner's application, the District Land Conference regularised the protrusion into the Government land on the advice of the then District Office. Although there was no record of consent by the former owner of the private land to the extension of the balconies into his lot, Lands D believed that he had agreed to such arrangement in view of his relationship with the house owner.

5. This Office accepted Lands D's assumption. However, the regularisation of the protrusion obviously had a permanent effect on the title of the lot in question. In addition, as it had failed to cause the encumbrance to be registered against the land leases of both parties, the regularisation arrangement was inappropriate. This Office, therefore, considered this complaint point substantiated.

Conclusion

6. Overall, The Ombudsman considered the complaint partially substantiated. Nevertheless, it should be noted that the department accountable was not Lands D or its DLO, but the former District Office under the then New Territories Administration.

LEGAL AID DEPARTMENT ("LAD")

Case No. OMB 2005/0227

Delay in processing — (a) delay in handling two court cases of claims for compensation; and (b) failing to inform aided person of progress for four years — substantiated

The complainant submitted two applications for legal aid in 1996 to file two compensation claims at court.

Legal Aid Granted

2. He was issued two legal aid certificates in 1997 and Counsel A was appointed to take up his cases.

3. The complainant alleged that between October 2000 and June 2002, he had tried to call Counsel A several times for progress and to inform him of his new address, but the Counsel never returned his calls. It was not until January 2004 that LAD contacted him again for an interview with counsel which, however, took place only in October 2004 with Counsel B. The complainant was dissatisfied that the Department had not informed him of the progress of his cases for four years and that there had been no progress whatsoever during that period.

LAD: Complainant Inaccessible

4. LAD maintained that it had never received the complainant's notification of his new address. The Department had, from February to September 1998 and from October 2000 to December 2003, tried repeatedly to call the complainant but in vain. It had also sent him 15 letters between 1998 and October 2000, but he seldom responded.

5. Counsel A claimed that he had reported thrice to his supervisor on the cases between 2000 and 2002. Confident of winning, he decided not to discharge the complainant's legal aid certificates, as was the practice when LAD lost contact with legal aid recipients.

6. All the necessary documents required for the complainant's cases had already been submitted to the court, according to LAD. However, loss of contact and lack of instruction from the complainant had put everything on hold. There was, consequently, nothing to report to him.

7. In July 2004, the cases were transferred to Counsel B upon re-arrangement of work.

Lack of Documentary Records

8. LAD could not produce any documentary evidence of Counsel A trying to contact the complainant or reporting progress to his supervisor between October 2000 and December 2003. Meanwhile, copies of his work calendar only showed his attempts to contact the complainant by telephone from January to June 2004.

9. This Office considered that, to avoid disputes, LAD should have written to the complainant when repeated telephone calls failed to reach him. We believed that Counsel A did not actively contact the complainant, resulting in delay over his claims.

Complainant Indifferent

10. On the other hand, although the complainant claimed to have telephoned LAD several times to notify his new address, he did not take the initiative to contact or visit the Department when LAD neither contacted him nor confirmed receipt of his message. All these suggested that he himself did not care sufficiently about the cases. He was, therefore, partly responsible for the delay.

Conclusion and Recommendations

11. Overall, The Ombudsman considered the case substantiated.

12. This Office recommended that LAD should:

(a) instruct staff to keep detailed records of action taken in all case files; and

(b) use other means of contact (such as letters) if repeated attempts to contact aided persons by telephone failed.

13. To strengthen monitoring of all cases, LAD subsequently used computer-generated, regular progress reports for supervisors' reference.

OFFICE OF THE TELECOMMUNICATIONS AUTHORITY ("OFTA") AND BUILDINGS DEPARTMENT ("BD")

Case No. OMB 2004/1386-1387

OFTA — approval procedures — impropriety in approving installation of mobile telephone base station — substantiated

BD — same — unsubstantiated

A residential unit adjacent to the complainant's was rented by a telecommunications service operator ("operator") for installing a mobile telephone base station ("base station"). Alleging that the unit could only be used for residential purpose, and worried about radiation and fire hazards from the base station, the complainant lodged a complaint with OFTA and BD. Nonetheless, the installation was eventually approved. She was dissatisfied that the two departments had handled the application improperly and shirked their regulatory responsibilities.

OFTA's Main Considerations

2. An application for installing a base station would be approved so long as it complied with the Telecommunications Ordinance as well as OFTA requirements that it should not interfere with other radio equipment and the level of non-ionizing radiation could meet international safety standards.

3. OFTA's Guidance Note for Applications highlighted a requirement for operators to file separate applications with other departments for their specific approval. The Authority would not conduct site visits for all applications or initiate checks with other relevant authorities, nor require operators to submit information on their applications for approval or waiver with other departments.

4. Should any department object to an installation, OFTA could only suspend, but not reject, the application.

5. In this case, OFTA had carried out a technical assessment of the installation and twice conducted investigation and survey in the unit. It was found that the technical specifications and non-ionizing radiation level of the base station met requirements. The installation was thus approved.

Installation as Exempted Works

6. BD confirmed that installation of the base station under complaint was regarded as exempted building works because it did not involve any alteration of the building structure. Furthermore, changing the unit into a base station was not considered a "material change" prohibited by law. The Department, therefore, would not take enforcement action.

Procedural Loopholes

7. Whilst wires and electrical devices in the unit were approved equipment and installed by authorised persons, if an operator did not also apply to BD, the Department could not assess the safety of the building structure and the means of escape. Meanwhile, OFTA would still approve the application. Such arrangements did not provide adequate safeguard for residents' safety.

8. Moreover, OFTA might approve an application without knowing whether an operator had complied with the Guidance Note or satisfied requirements by other authorities for waiver. There were no statements on consequence or penalty for non-compliance in the Guidance Note either.

9. Legal advice to OFTA was that the court would not object to an authority taking into account the views of other departments when assessing an application. We, therefore, had reservations over OFTA's stance stated in paragraph 4.

10. OFTA would require a declaration of consent from the Owners' Corporation ("OC") or property management company of the building only when a "concealed" base station was to be installed. When such consent could not be obtained, operators could install the antenna on the external wall of the building to get OFTA approval. OFTA was too cavalier in allowing this to happen.

11. There was no restriction on land use in the lease of the building in question. The installation, therefore, had not violated the land grant provisions.

12. This Office would not comment on the effects of base stations on health as it involved professional medical judgement.

Conclusion

13. As the authority for approving base station applications, OFTA should coordinate with other departments concerned. It had unduly relied on the initiative of the operators and the approval process was hardly fool-proof, so the public were not sufficiently protected. The complaint against OFTA was, therefore, substantiated.

14. BD had handled the application and complaint in accordance with the Buildings Ordinance and the OFTA Notes. It had not shirked its responsibility. The Ombudsman, therefore, considered the complaint against BD unsubstantiated.

15. Overall, the complaint was partially substantiated.

Recommendations

16. The Ombudsman recommended that OFTA:

(a) consider improvement to the monitoring and approval process, or to coordinate better with other authorities in providing some form of "one-stop" service in approving applications;

(b) study the feasibility of granting operators "temporary approval" for base stations and introducing penalty to deter installation and operation of base stations without authorisation;

(c) seek legal advice to clarify its powers for rejecting an application;

(d) step up investigation of suspected cases and conduct site inspections more frequently;

(e) revise its Guidance Note to remind operators of the need to follow Government policy against unauthorised building works and comply with the Deed of Mutual Covenant of a building;

(f) examine ways to step up inspection of base stations for compliance with fire safety regulations; and

(g) enhance publicity to allay public worries about the safety of base stations.

OFTA's Response

17. OFTA did not accept our conclusion and reiterated its arguments, mentioned in paragraphs 2 to 5 above. It considered the additional procedures for approval unnecessary and would only impede the construction of base stations, and coordination by OFTA for a "one-stop" service for approval would mean a heavy workload for both the operators and Government. Besides, it was not in a position and did not have the authority to assess whether a base station met the requirements of other departments or violated other laws, let alone using it as a ground for rejecting an application.

Final Remarks and Development

18. This Office considered OFTA's refusal to be the coordinator for the approval procedures did not reflect well on it as a responsible licensing authority. It should consider amending its current licensing requirements or issuing legally binding guidelines to strengthen regulation.

19. The Ombudsman decided to maintain her conclusion.

20. Subsequently, OFTA indicated that it would reconsider our recommendations, including the development of a "one-stop" shop for approving applications.

SOCIAL WELFARE DEPARTMENT ("SWD")

Case No. OMB 2004/4489

Disability allowance — delay in processing application — substantiated

In August 2004, the complainant's wife ("the applicant"), while in hospital, applied for disability allowance through SWD's Medical Social Service Unit ("MSSU") there.

Processing Outlived Applicant

2. Ms A of MSSU referred the application to the applicant's doctor for medical assessment. When the doctor returned the assessment report in mid-September, Ms A was on vacation.

3. Resuming duty in late September, Ms A was busy clearing backlog. It was not until mid-October that she sent the assessment report to SWD's Social Security Field Unit ("SSFU") for further processing. Later that month, the applicant passed away, without having been asked to sign her application. SWD, therefore, could not process it further.

Delay in Action

4. The complainant considered SWD to have delayed processing the application, taking over two months to point out that the applicant's signature was required.

5. Obviously, the delay was due partly to Ms A's inaction on the application and to SWD's inadequate arrangements for clearing the backlog from staff taking leave.

Procedural Flaw

6. Applications could be submitted through MSSU in a hospital or directly to SSFU. An application submitted through MSSU would first be referred to the doctor for medical assessment and then to SSFU for the applicant's signature, thus completing the application formalities ("Process A"). On the other hand, an application submitted to SSFU would be signed before being passed to MSSU for medical assessment ("Process B").

7. In the present case, the applicant had submitted her application through Process A but died before SSFU could contact her to sign the form for completion of formalities.

8. We considered that Process A should be revamped to enable applicants to sign the application form as early as possible.

9. The complaint was, therefore, substantiated.

Our Recommendations

10. SWD accepted The Ombudsman's conclusion and had plans for improvement by setting timelines, making proper leave arrangements and enhancing staff training.

11. Furthermore, SWD accepted The Ombudsman's recommendations to:

(a) apologise to the complainant for the delay;

(b) expedite its improvement plans; and

(c) revise Process A as we suggested.

SOCIAL WELFARE DEPARTMENT ("SWD")

Case No. OMB 2004/4737

Monitoring of elderly homes — (a) failing to monitor the services of a residential care home for the elderly; and (b) refusing to launch a full investigation into the death of the complainant's grandfather — unsubstantiated

Unnatural Death

The complainant's grandfather was resident in a care home for the elderly ("RCHE"). He had difficulty swallowing and had to take mashed food. However, in early July 2003, he was given a banana and choking on it, died on the way to hospital.

Request for SWD Investigation

2. The complainant attributed his grandfather's death to negligence of the RCHE staff concerned and SWD's failure to monitor its services.

3. In October 2004, he requested SWD to conduct a full investigation. The Department rejected his request as the incident had occurred more than a year ago and the Coroner's Court had delivered in July 2004 a verdict of "Death by Misadventure". The complainant was dissatisfied.

Monitoring of RCHEs

4. SWD's Licensing Office of Residential Care Homes for the Elderly ("Licensing Office") monitored the services of RCHEs through regular and surprise checks.

Inspections of RCHE Concerned

5. In this case, the Licensing Office had indeed carried out routine monitoring, including 13 inspections from early 2002 to early 2005.

6. Normally, the Licensing Office would promptly inspect an RCHE upon complaint. However, as RCHEs were not required to report any accidents or deaths, SWD was not aware of the choking incident until more than a year later. As a result, no immediate inspection had been made.

7. SWD carried out special and surprise inspections at the RCHE concerned afterwards and found it to have fully complied with the licensing requirements in staffing, health and care as well as social work aspects. It had also promptly implemented the recommendations of the Coroner's Court. SWD, therefore, considered another investigation into the incident unnecessary.

Our Observations and Conclusion

8. We considered it reasonable for the Licensing Office to conduct regular and surprise checks to ensure RCHEs' compliance with licensing conditions. Complaint-driven inspections and investigations on isolated incidents were also appropriate tools for additional monitoring of RCHE performance.

9. As for the complainant's request for an SWD investigation after more than a year, we noted that the Coroner's Court had already completed its inquest and the RCHE concerned had implemented its recommendations. An investigation by the Department would not be meaningful.

10. This complaint was, therefore, unsubstantiated.

Points Other than Alleged

11. Nevertheless, we found it unsatisfactory that SWD had relied only on complaints or Coroner's inquests to be informed of significant incidents at RCHEs (such as accidental death or injury) and in particular that the Department at first did not even consider this a problem.

12. As the licensing authority of RCHEs, SWD has a duty to ensure their proper functioning and operation, intervening whenever necessary. The Department should, therefore, put in place a system, e.g. one of mandatory reporting of significant incidents by RCHEs, to enable it to carry out prompt investigations and remedial measures.

Recommendations

13. The Ombudsman recommended that SWD:

(a) re-examine its general approach and re-orientate its staff attitude, providing clearer guidelines for inspections and effective monitoring of RCHEs;

(b) draw up departmental guidelines on investigation into significant incidents at RCHEs; and

(c) revise the Code of Practice to make for RCHE reporting significant incidents such as deaths by accidents.

14. SWD subsequently informed this Office that it would work with the RCHE sector to revise current arrangements and guidelines.

WATER SUPPLIES DEPARTMENT ("WSD")

Case No. OMB 2005/1529

Customer service hotline — waiting time too long — substantiated

Waiting for Hours

Between May and June 2005, a number of consumers ("the complainants") called the WSD hotline about their accounts or water supply. Allegedly, after they had selected to contact a customer service officer, the telephone system would indicate that all lines were busy and advise them to call later. Often, they had to spend tens of minutes or even hours to repeat the same telephone operation before they could start to join the queue and wait for an officer to answer them.

New Computer System

2. WSD explained that, in January 2005, a new Customer Care and Billing Computer System was introduced. Apart from enclosing a leaflet with the water bill, the Department had advertised in the press to explain the new format of the water bill. The advertisement was also on its website. However, most customers did not read the information carefully and chose to enquire by telephone instead. This resulted in a drastic increase of calls to the Customer Telephone Enquiry Centre ("CTEC").

3. Besides increasing workload for the CTEC, the new system had caused a backlog of account-related cases so huge that they could not be completed within the specified performance pledge. It had also taken time for WSD staff to familiarise themselves with its operation. All this meant longer time to process customer accounts.

4. To improve, WSD adopted such measures as streamlining work flow, redeploying staff to sections with heavier workload and providing callers with appropriate information, such as the longer time needed for processing applications and alternative channels for obtaining and submitting applications.

Inadequate Planning

5. WSD had failed to plan properly and underestimated the impact of the new system on customer service. Although it had attached a leaflet to the water bill, it had failed to alert customers sufficiently or explained details of the bill or reasons for delay clearly enough.

Vicious Circle

6. The slow processing of account-related cases and the huge backlog of enquiries had become a vicious circle.

Our Conclusion and Recommendations

7. Overall, The Ombudsman considered this complaint substantiated and recommended that the Director of Water Supplies:

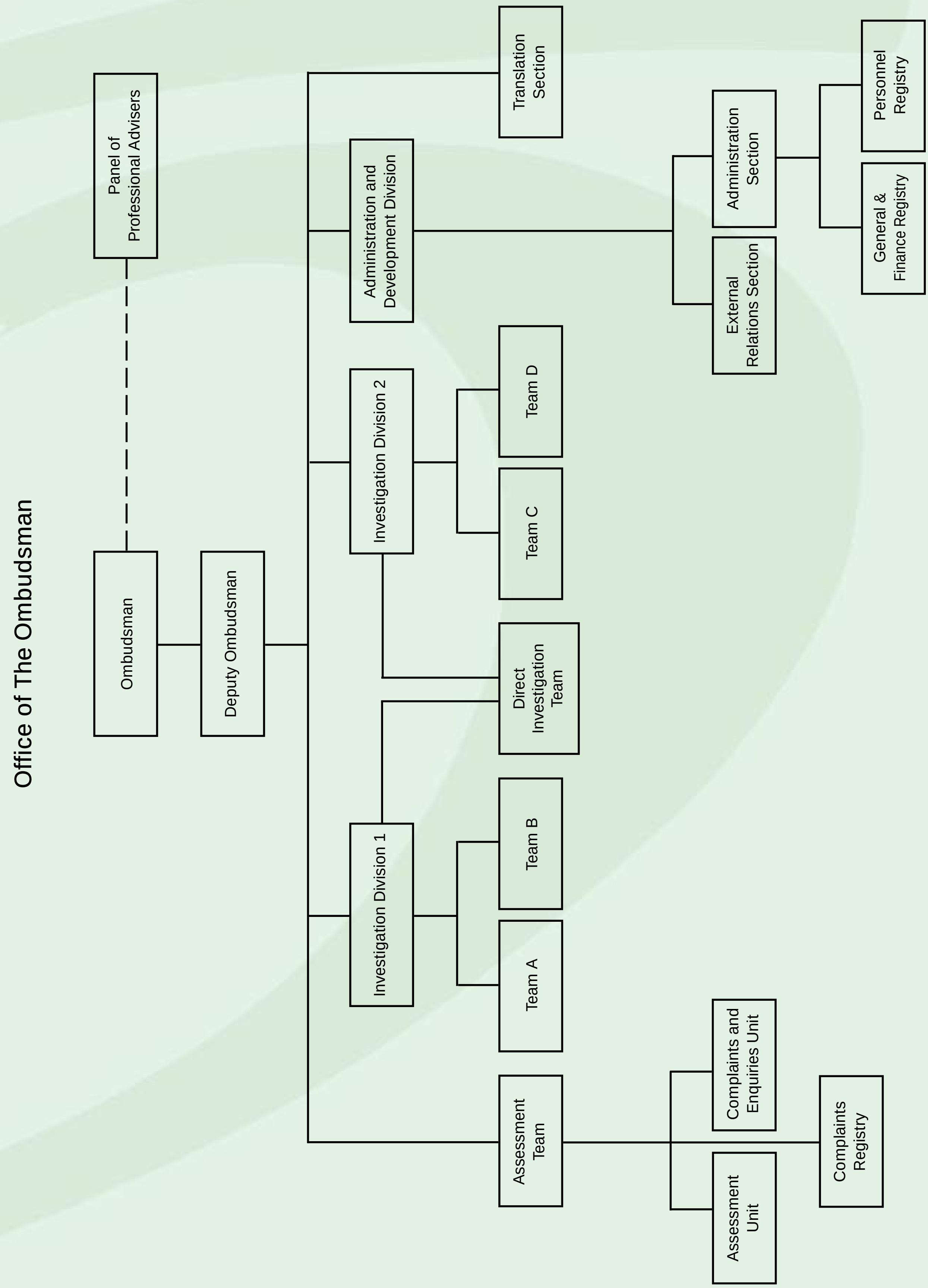
(a) monitor the CTEC closely and review the effectiveness of its measures for improvement in a bid to restore customer service back to normal as soon as possible;

(b) explain the situation to the public and provide different channels for enquiries and cases if it would take the Department some time before the CTEC service and processing of account-related cases could resume normal operation, so that customers would have reasonable expectations; and

(c) fully review the operation of the new system and the allocation of manpower resources and, if necessary, seek additional funds.

8. The Director of Water Supplies accepted all the recommendations and provided the statistics up to January 2006 (the latest at the time) to show that the CTEC service had generally returned to the level before the introduction of the new system. Processing of account-related cases was gradually also back to normal. The Ombudsman urged WSD to continue implementing the recommendations until all services were restored to normal operation.

Organisation Chart



Annex 14

Panel of Professional Advisers

Advisers

Mr Brian G. BAILLIE

Mr Francis Shu-ying BONG

Mrs Anne R. CARVER

Professor Johannes M.M. CHAN

Professor T.K. CHAN

Mr Gary Chung-keung CHANG

Mr Yan-kee CHENG

Mr Joseph Ming-kuen CHOW

Professor M.J.A. COORAY

Dr Raymond Chung-tai HO

Professor P.C. HO

Mr Anson Kam-choy KAN

Professor Kar-neng LAI

Mr Edmund Kwong-ho LEUNG

Dr Man-chiu LO

Professor Felice Lieh-MAK

Professor Dhirendra K. SRIVASTAVA

Mr Benny Y.T. TAI

Mr Vincent Kam-chuen TSE

Mr Chi-tin WAN

Mr Siu-kai WAN

Professor Gui-guo WANG

Dr Chung-kwong WONG

Professor John WONG

Professor C.Y. YEUNG

Mr Patrick Se-kit YUEN

* In alphabetical order

Annex 15

Visits to the Office of The Ombudsman

Date	Visitors*
26.5.2005	Delegates from the Committee for Children Protection of All China Lawyers Association, organised by Asian Legal Resource Centre
30.5.2005	The Baroness Prashar, First Civil Service Commissioner, United Kingdom
29.6.2005	Graduates in Master of Laws in PRC Law from the Mainland, organised by The Open University of Hong Kong
10.8.2005	Delegates from Law School of Zhongnan University of Economic and Law, organised by Society for Community Organization
9.9.2005	Postgraduate students of The 3rd Postgraduate Certificate Course in Global Corruption Studies, organised by the School of Professional and Continuing Education of the University of Hong Kong
14.10.2005	Delegates from the Hong Kong and Macao Affairs Office of the Guangdong Provincial People's Government
18.10.2005	Scholars from Wuhan University School of Law and East China University of Politics and Law, organised by Asian Legal Resource Centre
7.11.2005	Professor Huang Feng, Inspector, Department of Judicial Assistance and Foreign Affairs, Ministry of Justice
8.11.2005	Mr Gao Fengtao, Vice-Minister, Legislative Affairs Office, State Council
8.11.2005	Delegates from Overseas Affairs Section of The Council for the Korean Pact on Anti-Corruption and Transparency
10.11.2005	Mr Wang Jianming, Director of Anti-corruption Bureau, Supreme People's Procuratorate
15.11.2005	Officials from Hubei Province, organised by Global Modern Education (Group) Limited
2.12.2005	Mr Du Chun, Director General, Legal Affairs Department, Ministry of Justice
23.12.2005	Delegates from the National Ombudsman Commission, Indonesia
17.1.2006	Professor R M Surachman, Deputy Ombudsman, the National Ombudsman Commission, Indonesia

* Excluding group visits from local schools and social service agencies

Annex 16 Conferences and Duty Visits

Date	Participants	Conferences/Duty Visits
3 – 9 July 2005	Ms Alice TAI The Ombudsman Mr Tony MA Assistant Ombudsman Mr Frank LI Chief Investigation Officer Mr Tommy WONG Chief Investigation Officer Mrs Linda CHENG Senior Investigation Officer Ms Clara LI Senior Investigation Officer Ms Kathleen CHAN Senior External Relations Officer Mr Raymond CHAN Accountant Mr Danny NGAN Investigation Officer Mr Ben LI Investigation Officer	Exchange Programme with China Supervision Institute in Beijing, Changchun, Yanji and Harbin
6 – 10 November 2005	Ms Alice TAI The Ombudsman	Board of Directors' Meeting of International Ombudsman Institute in Antiqua



Table 1 Caseload

	Reporting year#				
	01/02 (10$^{1}/_{2}$ months)	02/03	03/04	04/05	05/06
(A) Enquiries received	**12,900**	**14,298**	**12,552**	**11,742**	**14,633**
(B) Complaints received	**3,736**	**4,382**	**4,661**	**4,654**	**4,266**
(C) Complaints brought forward	**814**	**760**	**772**	**1,088**	**719**
(D) Complaints for processing = (B) + (C)	**4,550**	**5,142**	**5,433**	**5,742**	**4,985**
(E) Complaints handled and concluded	**3,790**	**4,370**	**4,345**	**5,023**	**4,309**
By preliminary inquiries	**1,567**	**2,172**	**1,834**	**1,873**	**1,758**
– By referral to complainee departments/ organisations for replies (INCH)	353	176	203	209	185
– By rendering assistance/clarification (RAC)	1,214	1,996	1,631	1,664	1,573
By full investigation	**331**	**124**	**284**	**125**	**55**
– Withdrawn/Discontinued	6	2	6	0	2
– Substantiated	18	15	14	31	13
– Partially substantiated	263	39	24	46	14
– Unsubstantiated	42	68	236	45	26
– Incapable of determination	2	0	1	0	0
– Substantiated other than alleged	-	-	3	3	0
By mediation	**19**	**6**	**7**	**6**	**12**
Complaints screened out	**1,563**	**1,729**	**1,892**	**1,948**	**1,113**
– Restrictions	685	971	1,259	1,132	351
– Outside jurisdiction	878	758	633	816	762
Complaints not pursued	**-**	**-**	**-**	**-**	**1,371**
– Discontinued	310	339	328	1,071	137
– Withdrawn					147
– Not undertaken@	-	-	-	-	1,087
(F) Percentage of complaints concluded = (E) ÷ (D)	**83%**	**85%**	**80%**	**88%**	**86%**
(G) Total cases carried forward = (D) - (E)	**760**	**772**	**1,088**	**719**	**676**
(H) Number of direct investigations completed	**4**	**6**	**5**	**5**	**4**
(I) Direct investigation assessment reports produced	**0**	**1**	**5**	**6**	**6**

\# Period of Reporting Years
01/02: 16.5.01 - 31.3.02 02/03: 1.4.02 - 31.3.03 03/04: 1.4.03 - 31.3.04
04/05: 1.4.04 - 31.3.05 05/06: 1.4.05 - 31.3.06
From 2001/02, the reporting year ends on 31 March to coincide with the end of financial year.

@ Including "Potential Complaints". Please refer to the "Glossary of Terms".

Table 2 Enquiries/Complaints Received

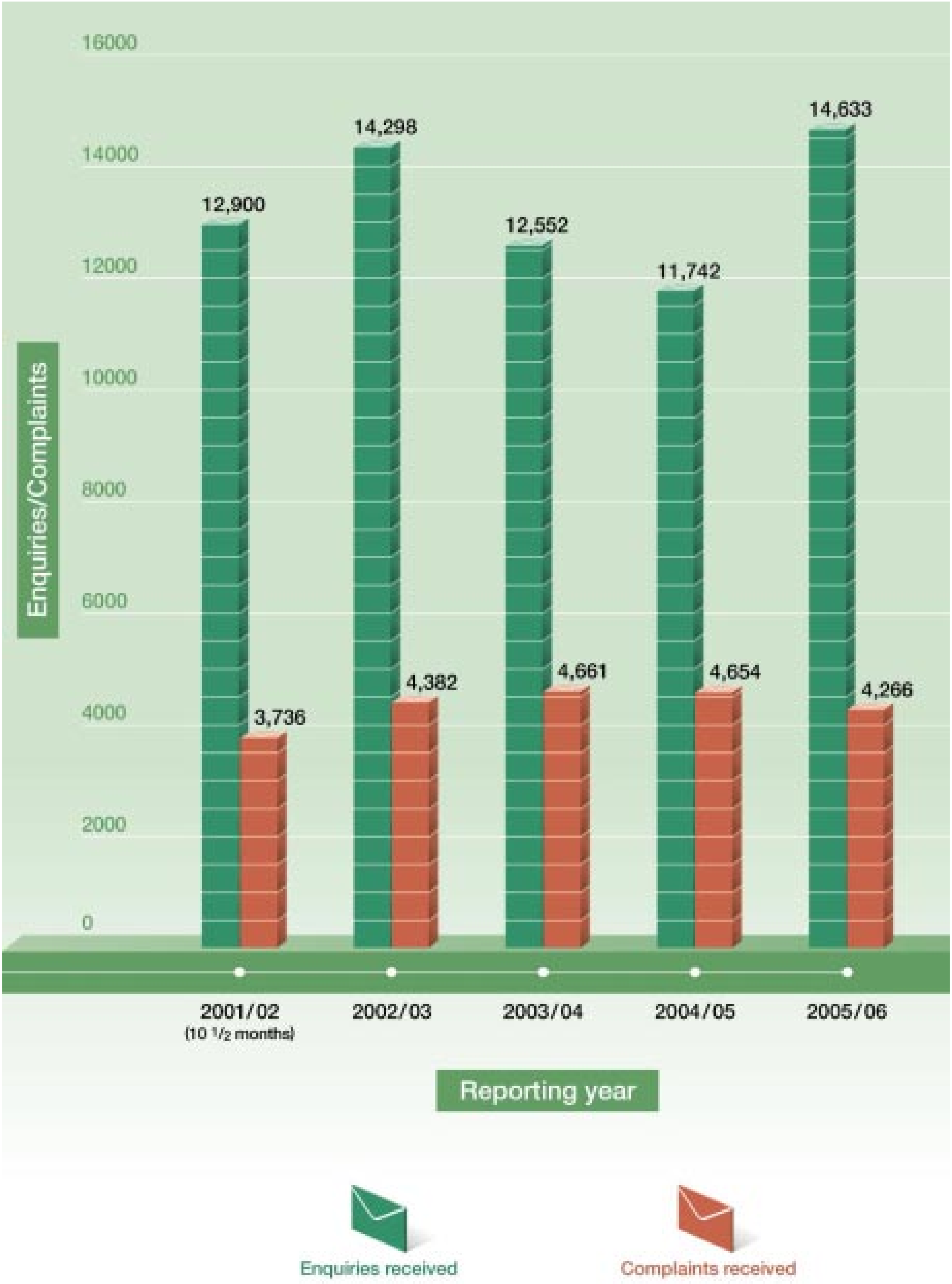


Table 3 Distribution of Enquiries/Complaints

Organisation		Enquiries	Complaints
Agriculture, Fisheries and Conservation Department	(AFCD)	76	35
Airport Authority	(AA)	12	4
Architectural Services Department	(Arch SD)	35	21
Audit Commission	(Aud)	2	2
Auxiliary Medical Service	(AMS)	1	2
Buildings Department	(BD)	346	216
Census and Statistics Department	(C & SD)	17	14
Civil Aid Service	(CAS)	5	1
Civil Aviation Department	(CAD)	10	8
Civil Engineering and Development Department	(CEDD)	12	12
Companies Registry	(CR)	13	5
Correctional Services Department	(CSD)	67	186
Customs and Excise Department	(C&ED)	82	31
Department of Health	(DH)	97	33
Department of Justice	(D of J)	26	19
Drainage Services Department	(DSD)	36	20
Electrical and Mechanical Services Department	(E & MSD)	27	17
Employees Retraining Board	(ERB)	14	9
Environmental Protection Department	(EPD)	80	57
Equal Opportunities Commission	(EOC)	31	13
Fire Services Department	(FSD)	50	39
Food and Environmental Hygiene Department	(FEHD)	635	331
General Office of the Chief Executive's Office	(GOCEO)	5	1
Government Flying Service	(GFS)	1	0
Government Laboratory	(Govt Lab)	1	2
Government Logistics Department	(GLD)	11	4
Government Property Agency	(GPA)	20	9
GS - Chief Secretary for Administration's Office	(GS-CS)	21	25
GS - Civil Service Bureau	(GS-CSB)	17	18
GS - Commerce, Industry and Technology Bureau	(GS-CITB)	3	3
GS - Constitutional Affairs Bureau	(GS-CAB)	1	0
GS - Economic Development and Labour Bureau	(GS-EDLB)	2	2
GS - Education and Manpower Bureau	(GS-EMB)	176	60
GS - Environment, Transport and Works Bureau	(GS- ETWB)	18	22
GS - Financial Services and the Treasury Bureau	(GS- FSTB)	7	7
GS - Health, Welfare and Food Bureau	(GS - HWFB)	5	3
GS - Home Affairs Bureau	(GS - HAB)	1	90
GS - Housing, Planning and Lands Bureau	(GS - HPLB)	4	12
GS - Security Bureau	(GS - SB)	5	3
GS - Financial Secretary's Private Office	(GS - FSPO)	1	1
Highways Department	(Hy D)	43	39
Home Affairs Department	(HAD)	151	117
Hong Kong Arts Development Council	(HKADC)	2	1
Hong Kong Examinations and Assessment Authority	(HKEAA)	35	12
Hong Kong Housing Authority	(HKHA)	51	33
Hong Kong Housing Society	(HKHS)	39	31

Table 3 Distribution of Enquiries/Complaints

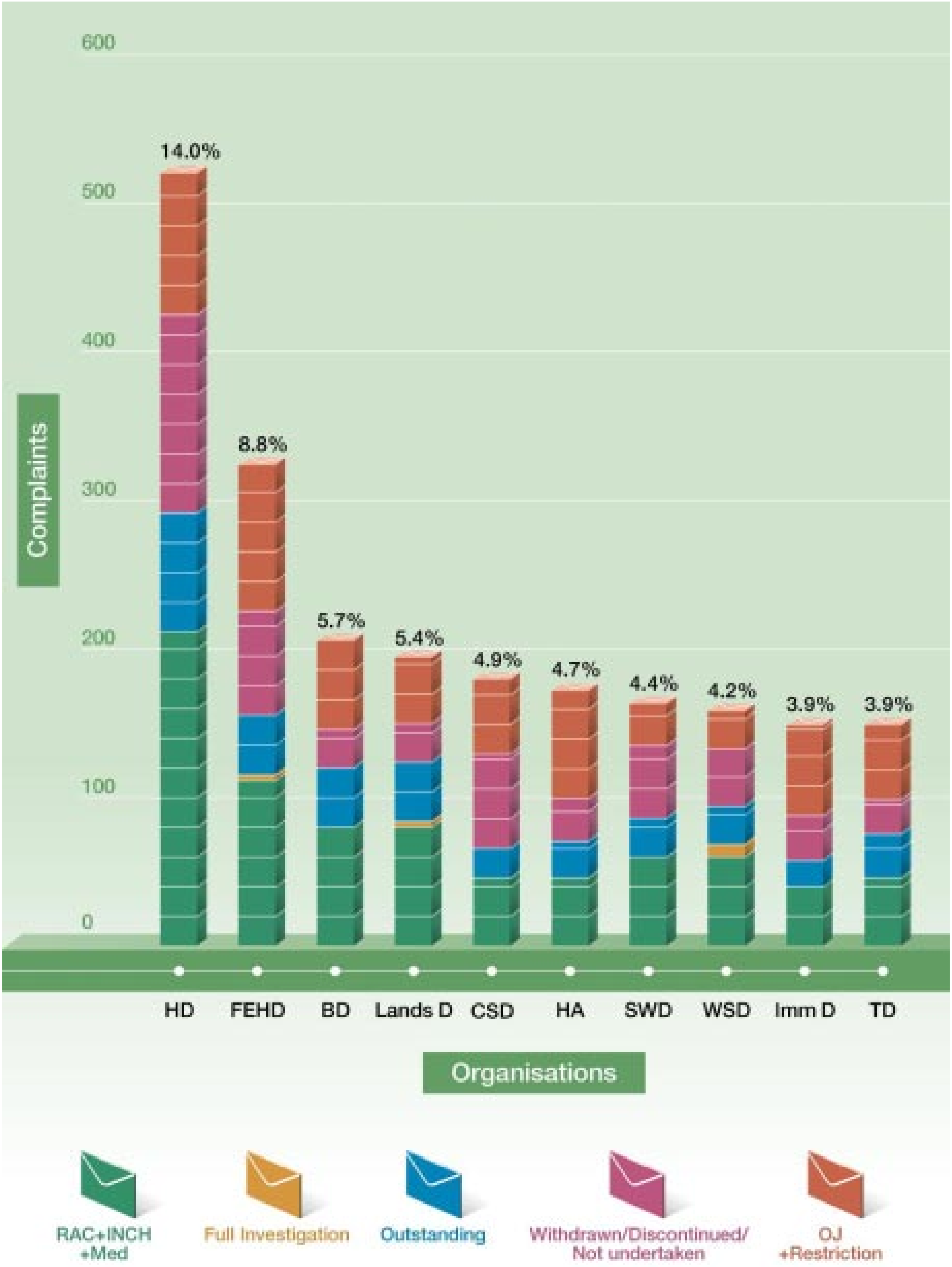
Organisation		Enquiries	Complaints
Hong Kong Monetary Authority	(HKMA)	35	11
Hong Kong Observatory	(HKO)	8	4
Hong Kong Sports Institute Limited	(HKSI)	2	0
Hospital Authority	(HA)	448	178
Housing Department	(HD)	1125	528
Immigration Department	(Imm D)	311	148
Information Services Department	(ISD)	3	1
Information Technology Services Department	(ITSD)	2	0
Inland Revenue Department	(IRD)	111	49
Intellectual Property Department	(IPD)	3	3
Judiciary Administrator	(JA)	192	58
Kowloon-Canton Railway Corporation	(KCRC)	33	18
Labour Department	(LD)	161	50
Land Registry	(LR)	15	6
Lands Department	(Lands D)	247	205
Legal Aid Department	(LAD)	186	65
Legislative Council Secretariat	(LCS)	4	3
Leisure and Cultural Services Department	(LCSD)	178	117
Mandatory Provident Fund Schemes Authority	(MPFA)	37	9
Marine Department	(MD)	19	11
Office of the Telecommunications Authority	(OFTA)	97	25
Official Receiver's Office	(ORO)	64	22
Planning Department	(Plan D)	17	24
Post Office	(PO)	136	73
Privacy Commissioner for Personal Data	(PCO)	24	5
Radio Television Hong Kong	(RTHK)	13	5
Rating and Valuation Department	(RVD)	41	13
Securities and Futures Commission	(SFC)	33	12
Social Welfare Department	(SWD)	485	165
Student Financial Assistance Agency	(SFAA)	116	38
Television and Entertainment Licensing Authority	(TELA)	2	8
Territory Development Department	(TDD)	1	0
Trade and Industry Department	(TID)	23	10
Transport Department	(TD)	227	148
Treasury	(Try)	15	8
University Grants Committee, Secretarist	(UGC)	1	0
Urban Renewal Authority	(URA)	16	6
Vocational Training Council	(VTC)	21	13
Water Supplies Department	(WSD)	349	158
Total		**7,095**	**3,767**

Note 1. The total number of enquiries and complaints received in Table 1 are 14,633 and 4,266 respectively. They are different from the figures shown in Table 3 for the following reasons:

- An enquiry/complaint involving more than one organisation is shown against each of the organisation.
- Enquiries/complaints involving bodies outside The Ombudsman's jurisdiction are not shown.

Note 2. Organisations under Schedule 1 to The Ombudsman Ordinance with no enquiries/complaints received in the reporting year are not shown.

Table 4 Complaints* : Top Ten Organisations



* See Note 1 in Table 3

Nature of Complaints

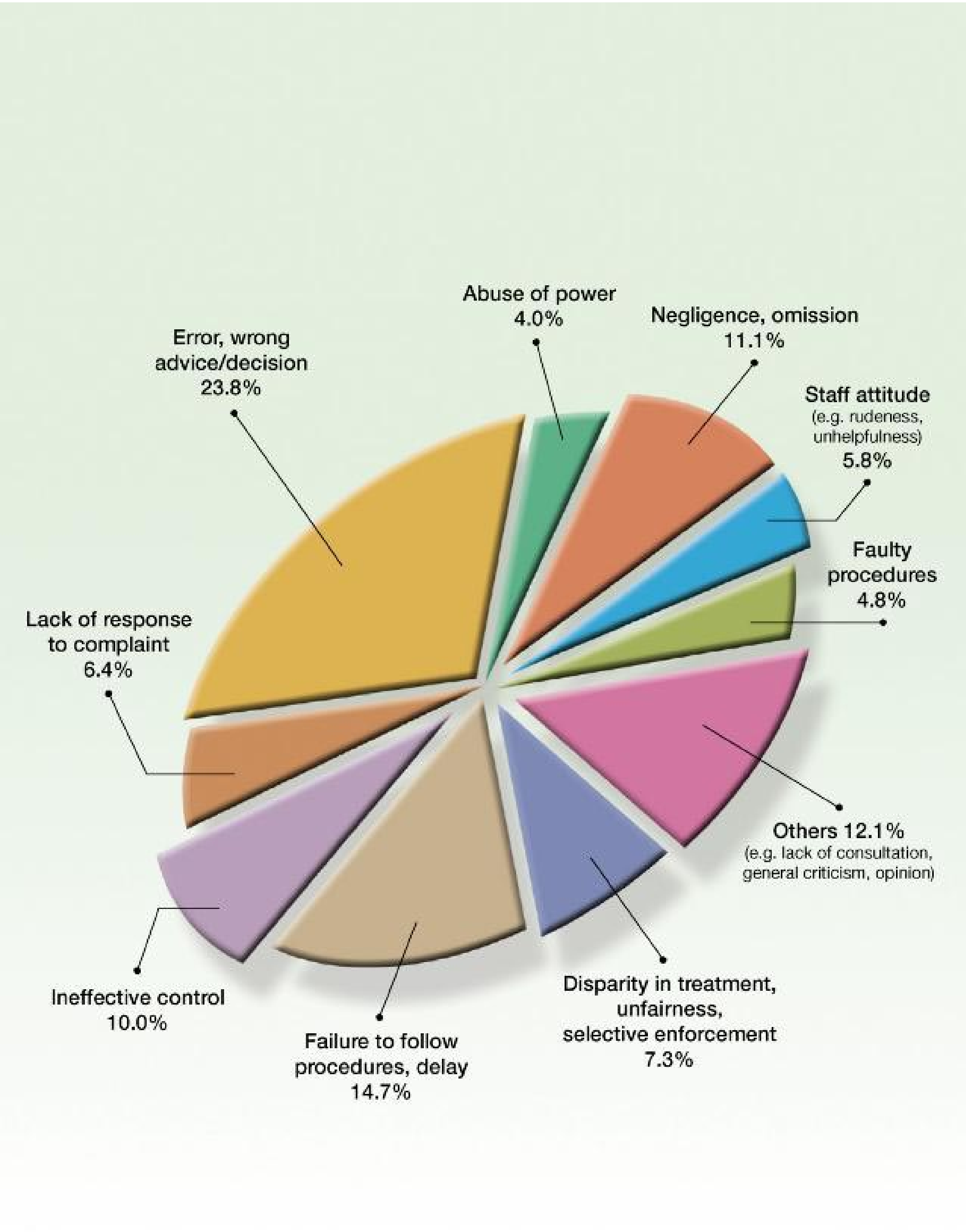


Table 6

Classification of Complaints Concluded : 4,309 Cases

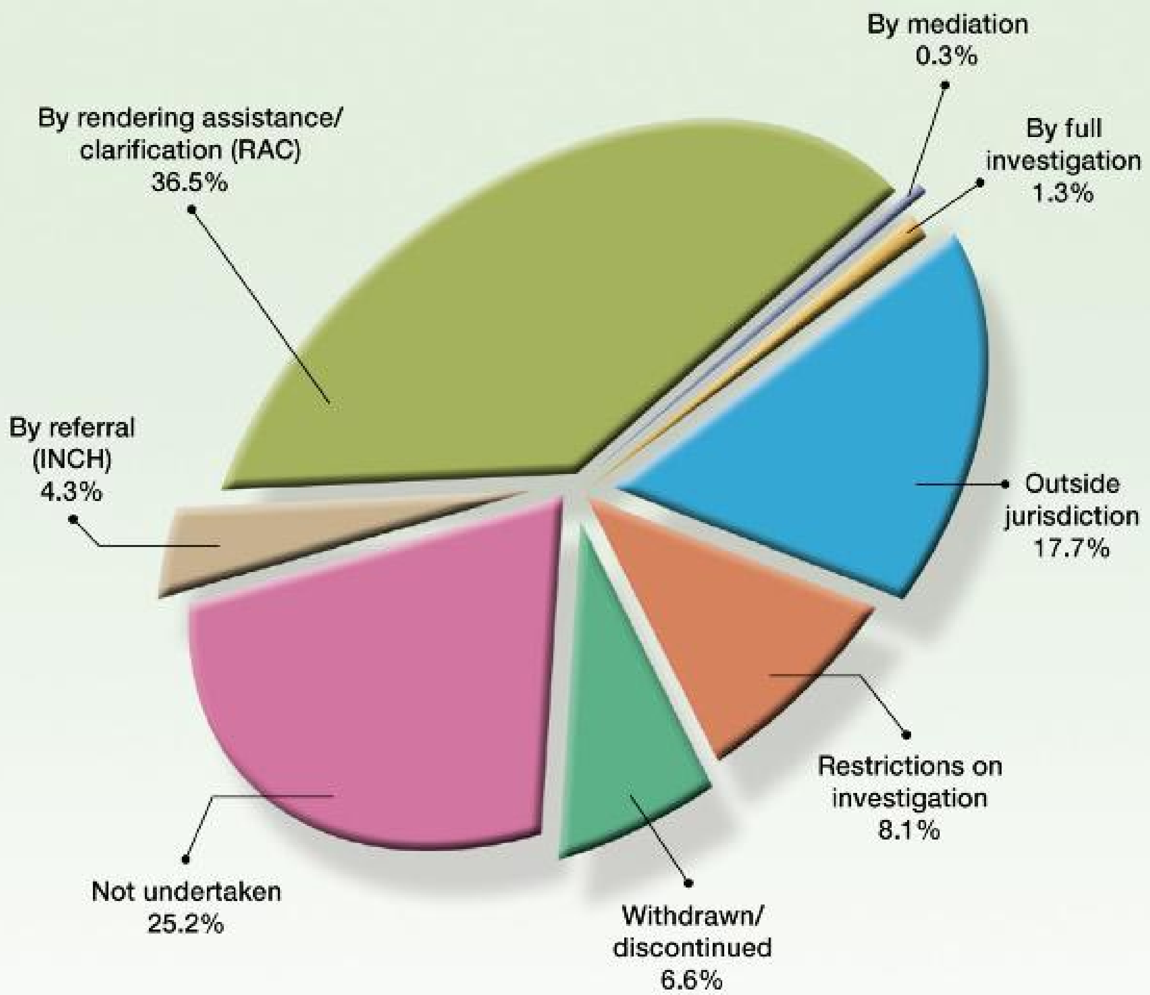


Table 7

Results of Complaints Concluded by Full Investigation : 55 Cases

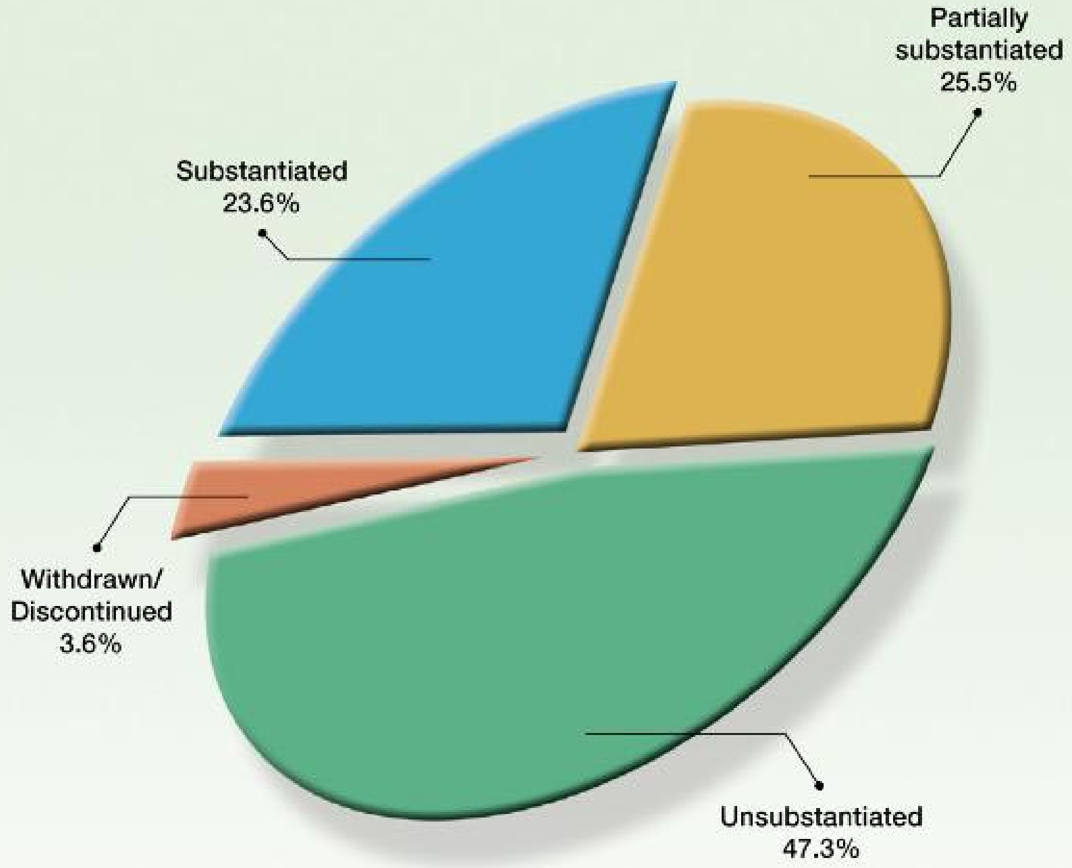


Table 8

Result of Complaints Concluded by Rendering Assistance/Clarification

Organisation	No. of complaints	Remedial action taken /suggested	No evidence of maladministration	Inconclusive	Ombudsman's suggestions on systemic improvement
Agriculture, Fisheries and Conservation Department	19	4 (21%)	11 (58%)	4 (21%)	9
Airport Authority	1		1 (100%)		1
Architectural Services Department	6	1 (17%)	5 (83%)		3
Buildings Department	102	19 (19%)	82 (80%)	1 (1%)	8
Census and Statistics Department	4		4 (100%)		
Civil Aid Services	1	1 (100%)			
Civil Aviation Department	4	1 (25%)	3 (75%)		2
Civil Engineering and Development Department	8	1 (12.5%)	7 (87.5%)		1
Companies Registry	1		1 (100%)		
Correctional Services Department	78	2 (3%)	69 (88%)	7 (9%)	4
Customs and Excise Department	6	1 (17%)	5 (83%)		1
Department of Health	9	3 (33%)	5 (56%)	1 (11%)	2
Department of Justice	3	1 (33$^1/_3$%)	1 (33$^1/_3$%)	1 (33$^1/_3$%)	1
Drainage Services Department	9	4 (44%)	5 (56%)		1
Electrical and Mechanical Services Department	2		2 (100%)		
Employees Retraining Board	6		5 (83%)	1 (17%)	
Environmental Protection Department	26	4 (15%)	22 (85%)		1
Equal Opportunities Commission	4		4 (100%)		
Fire Services Department	14	2 (14%)	12 (86%)		1
Food and Environmental Hygiene Department	129	29 (22%)	99 (77%)	1 (1%)	39
General Office of the Chief Executive's Office	1	1 (100%)			
Government Logistics Department	2		2 (100%)		
Government Property Agency	4		4 (100%)		
Government Secretariat					
- Chief Secretary for Administration's Office	15	5 (33%)	10 (67%)		2
- Civil Service Bureau	1		1 (100%)		
- Commerce, Industry and Technology Bureau	3	1 (33%)	2 (67%)		2
- Education and Manpower Bureau	28	10 (36%)	18 (64%)		11
- Environment, Transport and Works Bureau	9	2 (22%)	7 (78%)		
- Financial Services and the Treasury Bureau	3		3 (100%)		
- Health, Welfare and Food Bureau	2		2 (100%)		
- Home Affairs Bureau	48	1 (2%)	47 (98%)		3
- Housing, Planning and Lands Bureau	7		7 (100%)		
- Security Bureau	7		7 (100%)		
Highways Department	15	1 (7%)	13 (86%)	1 (7%)	
Home Affairs Department	58	3 (5%)	54 (93%)	1 (2%)	5
Hong Kong Examinations and Assessment Authority	6		6 (100%)		
Hong Kong Housing Authority	11	4 (36%)	7 (64%)		

Table 8

Result of Complaints Concluded by Rendering Assistance/Clarification

Organisation	No. of complaints	Remedial action taken /suggested	No evidence of maladministration	Inconclusive	Ombudsman's suggestions on systemic improvement
Hong Kong Housing Society	6		6 (100%)		
Hong Kong Monetary Authority	9	1 (11%)	8 (89%)		
Hong Kong Observatory	3		3 (100%)		
Hospital Authority	56	10 (18%)	43 (77%)	3 (5%)	9
Housing Department	224	42 (19%)	174 (78%)	8 (3%)	20
Immigration Department	46	7 (15%)	39 (85%)		8
Information Services Department	1		1 (100%)		
Inland Revenue Department	26	6 (23%)	20 (77%)		3
Judiciary Administrator	14	2 (14%)	12 (86%)		
Kowloon-Canton Railway Corporation	8	1 (12.5%)	7 (87.5%)		3
Labour Department	24		24 (100%)		
Land Registry	4		4 (100%)		
Lands Department	105	19 (18%)	86 (82%)		22
Legal Aid Department	22	1 (5%)	21 (95%)		
Legislative Council Secretariat	1		1 (100%)		
Leisure and Cultural Services Department	35	9 (26%)	26 (74%)		15
Mandatory Provident Fund Schemes Authority	5	1 (20%)	4 (80%)		
Marine Department	2	1 (50%)		1 (50%)	
Not Specified	3		3 (100%)		
Office of the Telecommunications Authority	15	2 (13%)	13 (87%)		
Official Receiver's Office	12		12 (100%)		
Planning Department	22	2 (9%)	20 (91%)		3
Post Office	30	5 (17%)	25 (83%)		9
Radio Television Hong Kong	2		2 (100%)		
Rating and Valuation Department	8	1 (12.5%)	7 (87.5%)		
Registration and Electoral Office	1		1 (100%)		
Securities and Futures Commission	4		4 (100%)		
Social Welfare Department	59	7 (12%)	50 (85%)	2 (3%)	1
Student Financial Assistance Agency	25	5 (20%)	19 (76%)	1 (4%)	6
Television and Entertainment Licensing Authority	2		2 (100%)		
Trade and Industry Department	4	3 (75%)	1 (25%)		1
Transport Department	48	8 (17%)	40 (83%)		5
Urban Renewal Authority	4		4 (100%)		
Vocational Training Council	6	3 (50%)	3 (50%)		1
Water Supplies Department	85	32 (38%)	52 (61%)	1 (1%)	15
Total	**1,573**	**269**	**1,270**	**34**	**218**

Note 1. Organisations under Schedule 1 to The Ombudsman Ordinance with no complaints concluded by Rendering Assistance/Clarification are not shown.

Processing Time for Complaints Concluded

(A) Processing Time for Complaints Concluded

TIME \ YEAR	01/02 (10 1/2 months)	02/03	03/04	04/05	05/06
Less than 1 month	53.7%	59.2%	56.4%	52.8%	**56.4%**
1 – 3 months	18.3%	15.1%	14.8%	12.5%	**15.4%**
3 – 6 months	22.6%	24.0%	27.0%	32.9%	**26.2%**
6 – 9 months	2.1%	0.9%	1.0%	1.0%	**1.3%**
9 – 12 months	0.9%	0.3%	0.4%	0.6%	**0.3%**
More than 12 months	2.4%	0.5%	0.4%	0.2%	**0.4%**
Total	**3,790**	**4,370**	**4,345**	**5,023**	**4,309**

(B) Processing Time for Complaints Concluded by Full Investigation and Other Modes

TIME \ YEAR	01/02 (10 1/2 months)	02/03	03/04	04/05	05/06
Concluded by full investigation					
Less than 3 months	0.3%	0.8%	37.7%	0.8%	**3.6%**
3 – 6 months	50.8%	56.5%	45.4%	36.8%	**23.7%**
6 – 9 months	13.6%	14.5%	8.4%	28.8%	**32.7%**
9 – 12 months	8.4%	9.7%	3.9%	24.8%	**21.8%**
More than 12 months	26.9%	18.5%	4.6%	8.8%	**18.2%**
Number of complaints	**331**	**124**	**284**	**125**	**55**
Concluded by other modes					
Less than 1 month	58.8%	60.9%	60.3%	54.1%	**57.1%**
1 – 3 months	20.0%	15.5%	13.2%	12.8%	**15.6%**
3 – 6 months	19.9%	23.1%	25.7%	32.8%	**26.3%**
6 – 9 months	1.0%	0.4%	0.5%	0.3%	**0.9%**
9 – 12 months	0.2%	0.1%	0.2%	0.0%	**0.0%**
More than 12 months	0.1%	0.0%	0.1%	0.0%	**0.1%**
Number of complaints	**3,459**	**4,246**	**4,061**	**4,898**	**4,254**



OMBUDSMAN 申訴專員

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